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Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to China*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert, Juan Pablo Bohoslavsky, on his mission to China from 29 June to 6 July 2015. The main objective was to analyse the State's contribution to the protection and realization of human rights in its external lending through national and international financial institutions. This included gaining a better understanding of practices, regulatory frameworks and safeguards used by Chinese financial institutions and new multilateral development banks supported by China, to ensure that financed projects protect and respect the rights of affected individuals and communities, and that benefits of social development are shared in an inclusive manner.

* The present report was submitted after the deadline as a result of consultations with the State concerned.

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** Circulated in the language of submission and Chinese only.

I. Introduction

1. The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights conducted an official visit to China from 29 June to 6 July 2015. The main purpose of the visit was to analyse the impact of the State's external lending through national and international financial institutions on the protection and realization of human rights in borrower countries. Another objective was to gain a better understanding of financial practices, regulatory frameworks and safeguards used by financial institutions, to ensure that financed projects protect and respect the rights of the individuals and communities concerned. During his visit, the Independent Expert particularly focused on the legal and institutional framework of the State's international lending, an issue relating to one of the priorities of the mandate holder, namely, to analyse the complex relationship between international financing and human rights.

2. China, while still a developing country, is a global player in the world economy and a major international lender. Loans from the China Development Bank and the Export-Import Bank of China for investments in foreign countries outnumber those of the World Bank.[1] The State's lending and expertise in infrastructure development, health care, agricultural development and other sectors can be considered important contributions to measures that may enhance the realization of economic, social and cultural rights and the right to development. Nonetheless, the State's leadership in foreign lending and investment comes with responsibilities, including ensuring respect for applicable national and international law binding on China and partner countries. While large infrastructure projects can benefit a majority of people, they should not be developed at the expense of those that may be negatively affected by them.

3. China has been an active promoter of two new multilateral development banks: the Asian Infrastructure Investment Bank in Beijing and the New Development Bank in Shanghai. The banks intend to address infrastructure gaps in many developing countries in a more efficient manner. One purpose of the visit by the Independent Expert was to ensure that the institutional policies of these new institutions adequately reflect social, environmental and human rights standards. Particular attention was paid to the Asian Infrastructure Investment Bank which started operating in January 2016.

4. During his visit to China, the Independent Expert benefited from discussions with government officials from the ministries of foreign affairs, education, finance, public security, human resources and social security, housing and urban-rural development, and commerce, and with representatives of the State Council Information Office, the National Health and Family Planning Commission, the People's Bank of China and the China Banking Regulatory Commission. The programme also included meetings with representatives of the China Development Bank, the Export-Import Bank of China and the Chinese Enterprises Confederation, including the China Chamber of Commerce of Metals, Minerals and Chemical Importers and Exporters, and with scholars and representatives of civil society organizations. The Independent Expert also met with the President-designate of the Asian Infrastructure Investment Bank.

5. The Independent Expert thanks the Government of China for its invitation and its full cooperation during the visit. He is grateful to all those who took the time to meet with him and to share their thoughts and information.

[1] Denise Leung et al, *Environmental and Social Policies in Overseas Investments: Progress and Challenges for China* (Washington, D.C., World Resources Institute, April 2013), p. 8.

II. Framework for analysis: human rights obligations in external lending

A. International human rights obligations

6. China is party to six of the core international human rights treaties: the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities. Although China signed the International Covenant on Civil and Political Rights in 1998, it has yet to ratify it.

7. Under article 2.1 of the International Covenant on Economic, Social and Cultural Rights, China has assumed obligations to engage in international assistance and economic cooperation with other countries with a view to achieve progressively the full realization of the rights recognized by the Covenant. The State's development financing can make an important contribution to this end.

8. Under international human rights law, China has three essential duties: to respect, protect and fulfil the human rights of individuals or groups within its territory or jurisdiction. The duty to protect entails taking measures to ensure that third parties, including financial institutions and business enterprises, do not contribute to human rights abuses.[2]

9. The Independent Expert welcomes the endorsement by China of the guiding principles on foreign debt and human rights (A/HRC/20/23, annex) and the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex). Both documents set out key international human rights principles that should be upheld by lenders and borrowers, Governments and business enterprises, including public and private financial institutions.

10. China also supports the Declaration of the Right to Development, which specifies that the human person is the central subject of development and should be the active participant and beneficiary of the right to development.[3]

11. Lastly, international labour and environmental standards are also relevant, as they protect the rights described in international human rights treaties and standards, such as the rights to just and favourable conditions of work, to health, food, adequate housing or safe and clean drinking water and sanitation. In this regard, the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work sets out universal standards and rights of workers, and "applies to all persons in all States regardless of their economic development and is binding upon all ILO member States irrespectively whether or not they have ratified the relevant eight fundamental labour conventions."

B. Extraterritorial human rights obligations in international lending

12. It is increasingly recognized that States' human rights obligations can extend beyond borders. Articles 55 and 56 of the Charter of the United Nations require all Member States

[2] See the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex), principle 1.

[3] General Assembly resolution 41/128, annex, art. 2.1.

to take joint and separate action to ensure universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion including through international cooperation. The obligation of States to protect and respect human rights is therefore not only restricted to their own territories.

13. The obligation that States take steps through international assistance and cooperation in the progressive realization of economic, social and cultural rights, enshrined in article 2, paragraph 1 of the International Covenant on Economic, Social and Cultural Rights, implies that States should also refrain from activities that would undermine the enjoyment of human rights outside their own territories. United Nations treaty bodies have reaffirmed extraterritorial human rights obligations in their general comments and in an increasing number of concluding observations.[4] Similarly, several special procedure mandate holders of the Human Rights Council have stressed that States should ensure respect for human rights outside their territory both in relation to their own policies and by ensuring that financial institutions or businesses headquartered in their jurisdiction respect human rights.[5]

14. In the context of international lending, the guiding principles on foreign debt and human rights note that "the duty of international assistance and cooperation enjoins States to ensure that their activities, and those of their residents and corporations, do not violate the human rights of people abroad" (A/HRC/20/23, annex, para. 22).

15. Principle 3 of the Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights affirm that all States have obligations to respect, protect and fulfil human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially, while principle 13 specifies that States should desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights outside their own territory.

16. For projects or operations financed and implemented abroad, applicable human rights norms include first and foremost the international and regional human rights treaties that have been ratified by the recipient State, including the national legislation of the particular country.[6] The human rights obligations of recipient countries may occasionally go beyond the human rights obligations of China, as the recipient country may have ratified additional human rights treaties. The principle of the most protective standard should be adhered to in cases where international, regional or national standards binding on a foreign country are more protective than those binding on China, or if the opposite is true.

17. When the Committee on Economic, Social and Cultural Rights reviewed the situation in China in 2014, it welcomed the fact that the country had provided economic and technical assistance for more than 2,000 projects in more than 120 developing

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[4] See for example Committee on Economic, Social and Cultural Rights, general comments No. 12 (E/C.12/1995/5), paras. 36-39, No. 15 (E/C.12/2002/11), para. 30-36 and No. 19 (E/C.12/GC/19), paras. 52-58; and concluding observations on Austria (E/C.12/AUT/CO/4), paras. 11-12, Belgium (E/C.12/BEL/CO/4), para. 22, China (E/C.12/CHN/CO/2), paras. 12-13, Germany (E/C.12/DEU/CO/5), paras. 9-11, and Switzerland (E/C.12/CHE/CO/2-3), para. 24. Similar general comments and concluding observations relating to the extraterritorial application of international human rights treaties have been made by the Committee on Civil and Political Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination.

[5] See for example A/HRC/21/39, paras. 96-99; A/HRC/27/55, paras. 70-72; A/HRC/28/65, paras. 41-47; A/HRC/29/25, paras. 18, 25, 38 and 72; and A/66/271, A/HRC/25/52 and A/HRC/31/61.

[6] Certain core human rights norms may be binding for all countries regardless of whether they have been ratified, given that they are considered to be of a customary nature or to reflect general principles of international law.

countries. With regard to the State's external human rights obligations, the representatives of China expressed concern that some of the projects had reportedly resulted in violations of economic, social and cultural rights in the receiving countries. The Committee called upon China to adopt a human-rights based approach to its policies of international cooperation, by (a) undertaking a systematic and independent human rights impact assessment prior to making funding decisions; (b) establishing an effective monitoring mechanism to regularly assess the human rights impact of its policies and projects in the receiving countries, and to take remedial measures when required; and (c) ensuring that there is an accessible complaint mechanism for violations of economic, social and cultural rights in the receiving countries. With regard to business enterprises, the Committee recommended that China adopt appropriate legislative and administrative measures to ensure the legal liability of companies and their subsidiaries operating in or managed from its territory regarding violations of economic, social and cultural rights in the context of their projects abroad (E.C.12/CHN/CO/2, paras. 12-13).

C. Responsibilities of financial institutions

18. In China, the two main lending institutions providing loans and credit insurance for infrastructure and industrial projects abroad are the China Development Bank a development financing institution, and the Export-Import Bank of China, a policy bank.

19. According to principle 4 of the Guiding Principles on Business and Human Rights,[7] States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support or services from State agencies, such as export credit agencies, official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence..

20. According to the commentary to principle 4,[8] where a business enterprise is controlled by the State or where its acts may be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligation. In the case of export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions, it was noted in the commentary that, where such agencies do not explicitly consider the actual and potential adverse impact on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State..[9]

21. The guiding principles on foreign debt and human rights also cover national and international financial institutions. They require lenders to conduct due diligence to ensure that a proposed loan will not increase the borrower State's external debt stock to an unsustainable level, that will make debt repayment difficult and impede the creation of conditions for the realization of human rights.[10] They also add that lenders should not finance activities or projects that violate, or would foreseeably violate, human rights in borrower States. To avoid this eventuality, it is incumbent upon lenders intending to finance specific activities or projects in borrower States to conduct a credible human rights impact assessment as a prerequisite to providing a new loan.

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[7] A/HRC/17/31, annex.

[8] Ibid., p. 9.

[9] See also A/66/271, paras. 18-28.

[10] See A/HRC/20/23, paras. 1, 6 and 39.

22. The financial industry has developed guidelines, such as the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation of the World Bank, and the Equator Principles. The Independent Expert welcomes the fact that the Industrial Bank has already adhered to the Equator Principles, and encourages all major financial institutions in China to join also.

D. Responsibilities of business enterprises

23. Chinese business enterprises, their subsidiaries and joint ventures operating or registered abroad are major recipients of lending. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate, and applies irrespectively of ownership, or whether enterprises are lenders or recipients of funding. Business enterprises must avoid causing or contributing to any adverse human rights impact throughout their own activities, and address such an impact when it occurs. Their responsibility to respect human rights is independent of whether a host or home State takes appropriate steps to prevent human rights abuses by businesses.

24. According to the Guiding Principles on Business and Human Rights, business enterprises should carry out human rights impact assessments, engage in meaningful consultation with potentially affected groups and other relevant stakeholders, provide remedies for any adverse human rights impact that they have caused or contributed to, and establish effective operational-level grievance mechanisms for individuals and communities who may be adversely affected.

E. Human rights obligations of host States

25. Home and host States – China and its partner countries – have complementary obligations. The duty to protect individuals living in host countries from business human rights abuses rests first and foremost with the host State where businesses operate or infrastructure projects are implemented. Host States are also primarily responsible to take appropriate steps to prevent, investigate, punish and redress such abuses and to enforce laws and regulations aimed at ensuring business respect for human rights within their territory and jurisdiction. This obligation does not, however, relieve home States, such as China, of their obligation to take appropriate measures to ensure that businesses headquartered in China or owned by the Chinese State or Chinese persons respect human rights in their overseas operations.

26. The obligation of China to ensure that Chinese business enterprises respect human rights in their overseas investments is commeasurable to the relevant human rights risks of a particular operation in a particular country; for example, in conflict-affected areas, the host State may be unable to protect human rights adequately owing to a lack of effective control. In such situations, principle 7 of the Guiding Principles on Business and Human Rights call upon home States of transnational corporations that they should assist corporations and host States to ensure that businesses are not involved in human rights abuse.

27. Human rights abuses caused by business enterprises are frequently a result of weak regulatory frameworks or enforcement capacities within host States. An adverse impact is often a consequence of lack of experience, capacity or willingness of the host State to ensure that complex infrastructure projects supported by foreign lenders comply fully with international standards. Home States, development banks and corporations that have gained experience both at home and abroad in managing large-scale infrastructure projects can therefore play a very helpful role in assisting partner countries overcoming such challenges.

Similarly, host States can make a significant difference in ensuring that investments supported by foreign lenders or businesses result in maximal positive social outcomes for their own population with regard to employment, environmental protection or human rights.[11]

28. The guiding principles on foreign debt and human rights also underscore the principle of shared responsibility of creditors and borrowers, and include public and private actors providing and receiving funds in their scope of application.[12]

F. Human rights obligations of multilateral development banks

29. States that have ratified binding international human rights treaties, retain their human rights obligations when they participate in multilateral development banks. For example, 52 of the 57 member States of the Asian Infrastructure Investment Bank, holding a combined 97.2 per cent of voting shares, have ratified five or more core international human rights treaties.[13] The initiators of the New Development Bank – Brazil, the Russian Federation, India, China and South Africa – have also ratified most core international human rights treaties.[14] The obligation of multilateral development banks to respect human rights in their operations is therefore beyond doubt.

30. Principle 10 of the Guiding Principles on Business and Human Rights calls upon States, when acting as members of multilateral institutions, to encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights. Where requested, such institutions are to help recipient States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising. Similarly, the guiding principles on foreign debt and human rights reaffirm that States may not derogate from international human rights law obligations when acting collectively through international and regional organizations of which they are members.

31. While most articles of agreement of multilateral development banks contain provisions requiring them not to interfere in political affairs of any member, the provisions cannot be interpreted as waiving due diligence or the need to ensure that their own operations comply with international environmental, social and human rights norms. In the twenty-first century, good governance and respect for environmental, social and human rights are not only part of sound economic decision-making but also reflect basic binding legal obligations. An anachronistic and inconsistent interpretation of such provisions in the articles of agreement would be in disrespect of international law and the integral relationship between human rights and development.

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[11] See Garth Shelton and Claude Kabemba, *Win-Win Partnership? China, Southern Africa and the Extractive Industries* (Johannesburg, Southern African Resources Watch, 2012), chap. 6.

[12] See A/HRC/20/23, annex, paras. 1, 16 and 23.

[13] German Institute for Human Rights, Consultation on AIIB Environmental and Social Framework, submission, annex, 23 October 2015.

[14] Brazil, the Russian Federation, India, China and South Africa have ratified the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of The Child and the Convention on the Rights of Persons with Disabilities. Four of the five States have ratified the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

III. Lending to developing countries

A. Lending in the context of the "Going Global" strategy

32. South-South cooperation in China has a 60-year history, during which it has undergone several changes.[15] The past 15 years have witnessed an unprecedented acceleration in economic and development cooperation in the context of the State's "Going global" strategy, which encourages outward investment by Chinese companies, the promotion of trade and export of products, services and technologies, overseas exploitation of resources and infrastructure construction by Chinese enterprises. Most of the State's economic cooperation with developing countries is of a commercial nature, even though China has also significantly increased its assistance to partner countries.

33. During the period from 2010 to 2012, China provided $14.4 billion in foreign aid, including grants, interest-free loans and concessional loans to 121 countries. Its foreign aid has further increased in recent years. According to a white paper issued in July 2014 by the Information Office of the State Council, 36.2 per cent of all assistance is provided in the form of grants, 8.1 per cent in interest-free loans and 55.7 per cent in concessional loans. Although the State's foreign assistance statistics are gathered in a manner different to that followed in member countries of the Organization for Economic Cooperation and Development (OECD), it can be safely said that China – itself a developing nation – has become one of the world's 10 largest providers of development assistance.

34. According to the Ministry of Commerce, Chinese outward foreign direct investment surged from $12.3 billion in 2005 to $123.12 billion in 2014.[16] It has been estimated that, during the period 2004-2013, a large proportion of foreign direct investment was received by the global South, including Africa (14 per cent), Asia (31 per cent) and Latin America (5 per cent).[17]

35. Lending usually comes in the form of large loans. To reduce lending costs, the State has used, inter alia, loans-for-oil agreements or included purchase requirements, requiring the borrower to purchase Chinese equipment or to hire Chinese companies for construction activities. One study found that Chinese banks channelled 87 per cent of their loans in Latin America into the infrastructure, energy, mining, transportation and housing sectors, which received only about one third of the funds allocated by the World Bank and the Inter-American Development Bank.[18]

36. In 2001, China pledged to reduce or cancel some $1.2 billion of debt owed by heavily indebted poor countries and least developed Countries.[19] According to information provided by the Government, since 2000, China has signed debt exemption protocols amounting to 30 billion RMB with 50 States in the African, Asian, Caribbean and Pacific regions. Unlike the Heavily Indebted Poor Country debt relief regime, Chinese debt relief was non-conditional and was also extended to distressed developing countries above the strict poverty line.

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[15] See Deborah Brautigam, *The Dragon's Gift: The real story of China in Africa* (Oxford University Press, 2010).

[16] Ministry of Commerce, "The State Council Information Office Holds a Press Conference on Statistical Communiqué of 2014 on China Direct Investment Overseas", 22 September 2015.

[17] See Lihuan Zhou and Denise Leung, "China's Overseas Investments, Explained in 10 Graphics", World Resources Institute, 28 January 2015,.

[18] See Kevin P. Gallagher, Amos Irwin and Katherine Koleski, "The New Banks in Town: Chinese Finance in Latin America", report, Inter-American Dialogue, February 2012.

[19] See Brautigam, *The Dragon's Gift* (see footnote 15), p. 127-130.

37. China has not tied its lending to the implementation of IMF structural adjustment programmes, which frequently include such controversial conditions as the privatization of basic services or trade liberalization. China has also assisted a number of States that were cut off from other international financial support. Nonetheless, the loans granted by its policy banks are not completely free of certain embedded conditionalities, such as tying loans to the purchase of a certain percentage of goods and services from Chinese businesses.[20]

38. China has focused on improving trade-related infrastructure and production capacity in partner countries by building or upgrading roads, bridges, railways, airports and harbours, and reducing import taxes, in particular for products from least developed countries. Projects in the energy, telecommunication and information technology sectors also make up a large percentage of the State's South-South cooperation. In total, 44.8 per cent of all foreign assistance during the period 2010-2012 supported economic infrastructure, while 27.6 per cent was allocated to social and public infrastructure.[21]

39. In March 2015, the Government of China released a blueprint for a "silk road and belt", a huge infrastructure development initiative designed to "promote the connectivity of Asian, European and African continents and their adjacent seas".[22] The Asian Infrastructure Investment Bank and the New Development Bank are expected to play an important part in infrastructure investment in the region; in November 2014, China pledged to contribute $40 billion to set up a "silk road fund".

40. When China became a major international lender, some depicted the country as a "resource-hungry tiger", allegedly exporting its own labour force without providing job opportunities to locals, or accused China of providing excessive lending to developing countries that would not be able to repay their debts. A more differentiated view has, however emerged, challenging such general perceptions with a more nuanced assessment.[23] Comparative studies conclude that the record of Chinese actors investing abroad is often not very different from that of local or other foreign businesses, with regard to compliance with international norms in the field of human rights, labour and the environment.[24]

41. The Independent Expert wishes to highlight the fact that, over the past decade, the Government of China has made significant policy changes with regard to the promotion of environmental policies and corporate social responsibility. In his view, however, it has made more progress in endorsing concepts of green financing and corporate social responsibility than in incorporating a human rights-based approach into its international lending and foreign assistance.

42. It should be noted that respect for human rights is not part of the official criteria required for providing support to other developing countries. While China uses foreign aid and preferential loans to support raising living standards in partner countries, it characterizes its South-South cooperation as being based on the principle of non-interference in domestic affairs. In addition, Chinese officials and media usually refrain

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[20] See Mikael Mattlin and Matti Nojonen, "Conditionality and Path Dependence in Chinese Lending", *Journal of Contemporary China*, vol. 24, No. 94 (2015), pp. 701-720.

[21] Information Office of the State Council, "China's Foreign Aid (2014)", p. 4.

[22] National Development and Reform Commission, Ministry of Foreign Affairs, "Visions and actions on jointly building silk road economic belt and 21st-century maritime silk road", *Xinhuanet*, March 2015.

[23] See for example Brautigam, *The Dragon's Gift* (see footnote 15); Gallagher et al, "The New Banks in Town" (see footnote 18 above); and Rebecca Ray et al., *China in Latin America: Lessons for South-South Cooperation and Sustainable Development* (Boston University Global Economic Governance Initiative, April 2015).

[24] See Shelton and Kabemba, *Win-Win Partnership?* (see footnote 11 above), chap. 5, pp. 147-173.

from using human rights terminology to present the State's support for partner countries in the field of development. In the Independent Expert's view, the South-South cooperation policy aimed at delivering "mutual benefits" can contribute to the realization of economic, social and cultural rights in partner countries.

B. Institutional framework

43. In China, the development cooperation framework involves a number of government agencies, primarily the Ministry of Commerce, the Ministry of Foreign Affairs and the Ministry of Finance, which work in partnership with other central and local government agencies, and public and private enterprises, and institutions. The Ministry of Commerce is responsible for the formulation of policies on foreign trade, export and import regulations, foreign direct investments, consumer protection, market competition and negotiating bilateral and multilateral trade agreements, while its Department of Aid to Foreign Countries overseas the State's development assistance.

44. The Export-Import Bank of China and the China Development Bank are the main instruments of the State's foreign economic cooperation, financing large-scale infrastructure development projects in Africa, Asia and Latin America. The Export-Import Bank of China, founded in 1994, is mandated to facilitate the export and import of Chinese mechanical and electronic products, equipment and high-tech products, to assist Chinese companies in their offshore project contracting and outbound investment, and to promote international economic cooperation and trade. It is the sole provider of State concessional loans, which account for the majority of Chinese foreign aid.

45. The China Development Bank, also established in 1994, provides medium- to long-term financing facilities, with a particular focus on the development of infrastructure and key industries. The bank has become the world's largest development finance institution and the State's largest foreign investment and financing bank. By end of 2013, it had signed 243 cooperation agreements with 81 States, to support them in constructing infrastructure facilities and developing small- and medium-sized enterprises and agricultural businesses. According to its sustainability report for 2013, at the end of 2013, its foreign currency loans to 114 States and regions had reached $250.5 billion.

46. In China, large State-owned enterprises are the most prominent actors in the "Going Global" strategy, and are backed by lending and export credit insurance of Chinese financial institutions. Since 2011, 113 centrally administered State-owned enterprises have sustained an annual growth rate in their overseas assets of 16.4 per cent. By the end of 2014, 107 centrally administered enterprises had set up 8,515 branches in 150 countries and regions, and accounted for 70 per cent of all outbound direct investment.[25]

C. Regulatory framework for external lending and outbound investment

47. The Chinese authorities have made efforts to strengthen their regulations for outbound investment in order to avoid negative environmental and social impact. The Independent Expert encourages China to further strengthen these regulatory frameworks in accordance with international best practice. Such efforts should more visibly include human rights standards, obligations and responsibilities, and also ensure their enforceability.

48. Achieving greater human rights protection would also require ensuring that existing guidelines and policies are more rigorously monitored in their implementation. Most are

[25] "SOE overseas assets surge", *Xinhua*, 19 June 2015.

currently voluntary and lack an accountability and enforcement mechanism. In particular, affected individuals and communities should have access to effective remedies if existing regulations and international norms are not adhered to.

49. During his visit, the Independent Expert was briefed about the State's most recent national human rights plan of action (2012-2015), which did not address the issue of human rights in the field of business, by for example ensuring that lending and outbound investment complied with international human rights standards.

50. Over the past decade, however, an increasing number of guidelines relating to business and finance have been adopted by different government bodies. Some relate to human rights, such as the principles of non-discrimination, compensation of losses in case of resettlement and consultation with affected communities. Nonetheless, they do not yet cover human rights in a comprehensive manner.

51. In December 2007, the State-owned Assets Supervision and Administration Council issued a set of guidelines for all central State-owned enterprises on fulfilling corporate social responsibilities. The guidelines require State-owned enterprises to give top priority to work and product safety, the legal interests of employees, compliance with regulations and laws, investment into environmental protection, and non-discrimination on grounds of gender, nationality, religion or age, including equal pay for equal work, and encourage State-owned enterprises to participate in social welfare programmes.

52. In March 2009, the Ministry of Commerce issued Measures for Overseas Investment Management, containing detailed regulations for the approval of overseas investments. According to the regulations, any overseas investment considered likely to violate "any international treaty conducted by China with a foreign party" would not be approved. While in theory this allows for the consideration of obligations from international human rights treaties signed by China and partner countries, the Independent Expert was not informed during his visit on how the Ministry screens overseas investments that may pose significant human rights risks.

53. The Guidelines on Environmental Protection in Foreign Investment and Cooperation, published by the Ministry of Commerce in March 2013, focus on ensuring environmental protection and promote the sustainable development of foreign investment and cooperation. They also require, however, that enterprises should respect the religious belief, cultural traditions and national customs of community residents of the host country, safeguard the legitimate rights and interests of labourers, offer training, employment and re-employment opportunities to residents in the surrounding areas, promote the harmonious development of the local economy, the environment and the community, and cooperate on the basis of mutual benefit.

54. The Independent Expert was informed by the China Banking Regulatory Commission about its Green Credit Guidelines, which apply to all policy and commercial banks. Article 4 of the Guidelines covers "hazards and risks [to] the environment and society that may be brought about by the construction, production and operating activities of banking institutions' clients and key affiliated parties thereof, including environmental and social issues related to energy consumption, pollution, land, health, safety, resettlement of people, ecological protection [and] climate change". Article 10 stipulates that Chinese banking institutions are to "establish and constantly improve policies, systems and processes for environmental and social risk management", while article 11 requires clients facing major environmental and social risks to put in place risk response plans and to establish sufficient, effective stakeholder communication mechanisms, including third-party assessment of such risks.

55. In 2012, an article 21 was included in the Green Credit Guidelines, requiring banking institutions to strengthen explicitly environmental and social risk management for

overseas projects for which credit has been granted. It requires Chinese financial institutions to ensure that project sponsors comply with applicable laws and regulations on, inter alia, environmental protection, land, health and safety in the country or jurisdiction hosting the project. In addition, banking institutions are required to pledge publicly that appropriate international practices or international norms will be followed in the implementation of the project so as to ensure alignment with good international practices.

56. The Green Credit Guidelines provide an opportunity to enhance respect for human rights in Chinese project financing and foreign investment. The Independent Expert is nonetheless concerned about the implementation of the Guidelines by Chinese banking institutions in overseas projects given that the mechanisms for monitoring and enforcing compliance still appear to be weak.[26] While the Guidelines attribute the responsibility to supervise environmental and social risk management, including off-site and on-site examination, to the China Banking Regulatory Commission, the Independent Expert did not receive any information on any investigations conducted with regard to cases of potential non-compliance of financial institutions when lending for overseas projects.

D. Guidelines of the China Development Bank and the Export-Import Bank of China

57. During his visit, the Independent Expert was informed by the China Development Bank and the Export-Import Bank of China about their guidelines for reviewing the environmental and social impact of projects. The evaluation manual of the China Development Bank requires programmes to comply with local laws, to undergo the necessary approval and registration procedures, and to meet certain requirements on environment protection, use of land, labour standards and community responsibilities. Once a project has been approved and completed, the bank also requests a report on environmental monitoring efforts, and solicits comments from the local environmental authority to ascertain whether environmental protection requirements have been met. Relevant evaluation guidelines are, however, considered core business secrets and not published. As a consequence, the Independent Expert was not able to assess fully the extent to which compliance with international human rights standards has been integrated into the guidelines. More importantly, this lack of transparency may also constrain public scrutiny and access of affected individuals or communities to redress.

58. Annual corporate social responsibility reports published by the China Development Bank since 2007 show that the bank has fully endorsed the concepts of green financing and lending for sustainable development in its policies. Unlike environmental and social considerations, human rights are not explicitly considered in any depth in its social responsibility reports.

59. The China Development Bank is a member of the United Nations Global Compact and has adhered to its 10 principles, covering human rights, labour rights, respect for the environment and combating corruption. In this context, the bank has regularly expressed its commitment to observe international conventions and international practices signed or recognized by the Government of China to ensure that its business is not complicit in human rights violations. In its sustainability report for 2013, the bank has also pledged to observe the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as other conventions and declarations.

[26] Friends of the Earth, *Going out, but going green? Assessing the implementation of China's Green Credit Guidelines overseas* (Washington, D.C., Friends of the Earth U.S., November 2014).

60. While the China Development Bank uses 84 indicators of the Global Reporting Initiative for its sustainability reporting, to date it has not reported on any of the 12 human rights indicators suggested in the guidelines issued by the Initiative. For example, the Global Reporting Initiative Guidelines encourage companies to report regularly statistical information on significant investment agreements that include human rights clauses or that have undergone human rights screening. They also suggest that companies provide information on the number of operations that have been subject to human rights reviews or impact assessments, and on human rights grievances that have been filed, addressed and resolved through formal grievance mechanisms. To date, the China Development Bank has not reported on compliance with these indicators.

61. Like the China Development Bank, the Export-Import Bank of China has fully endorsed green lending and the concept of sustainable development. The Export-Import Bank has, however, refrained from making any explicit policy commitment to respect human rights in its public annual reports and corporate policy statements.

62. According to information received by the Government, in the second half of 2015, the Export-Import Bank of China introduced, on the basis of the Green Credit Guidelines, a new green credit system covering labour and work conditions, pollution prevention and control, community health and safety, land acquisition and involuntary resettlement, respect for minority cultures and customs, and protection of cultural heritage.

63. The Export-Import Bank may require the inclusion of environmental and social responsibilities in the loan contract, and stop disbursing loans or demand early payback of a loan, in accordance with the loan contract, if the borrower fails to take agreed measures to avoid, reduce or mitigate any negative environmental or social impact. The bank has an independent selection committee to assess project feasibility and environmental and social impact, and conducts regular site and off-site inspections after loan disbursal to monitor compliance. A consultative mechanism between the bank, project owners and implementing corporations has been created to ensure successful project implementation.

64. The Export-Import Bank of China has also developed an environmental assessment framework and a resettlement policy framework based on the environmental and social safeguards of the World Bank relating to involuntary resettlement.

65. Neither the China Development Bank nor the Export-Import Bank of China disclose basic project information, including environmental and social impact assessments, resettlement plans or corresponding monitoring reports on their corporate webpages. According to the Government of China, such information cannot be disclosed to the public owing to project confidentiality clauses. The disclosure of such documentation would, however, greatly improve compliance by borrowers.

66. To the knowledge of the Independent Expert, the China Development Bank and the Export-Import Bank of China have yet to establish any formal institutional grievance mechanisms. The establishment of such mechanisms would be important, particularly if local grievance mechanisms provided by borrowers fail to bring affected persons any effective remedy. Many multilateral development banks and an increasing number of national developing banks and export credit agencies have established independent review or complaint mechanism to engage in a dialogue or investigate concerns when individuals, groups, communities or other parties believe that they have been adversely affected by projects financed by them.

E. Guidelines for business associations

67. The Independent Expert was briefed on the Guidelines for Social Responsibility in Outbound Mining Investments published by the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters in October 2014. They were supplemented in December 2015 by the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains, which aim at preventing extraction and trade of natural resources from fuelling violent conflict and serious human rights abuses. While both sets of guidelines are of a voluntary nature, they set a precedent by incorporating human rights, labour and environmental standards in a holistic manner.

68. The above-mentioned Guidelines for Social Responsibility explicitly declare that companies should respect human rights and comply with the eight fundamental conventions of the International Labour Organization and the labour laws, regulations and standards of the host country. They call upon Chinese mining companies to observe the Guiding Principles on Business and Human Rights throughout the life cycle of mining projects and to strengthen responsibility throughout the extractive industries value chain.

69. The Guidelines also call for minimizing the involuntary resettlement of people residing in the mining area and ensuring that they are fairly compensated. They recognize the right to free, prior and informed consent of local communities, including indigenous peoples, and include comprehensive chapters on occupational health and safety, labour rights issues (including the prohibition of child, forced and compulsory labour), non-discrimination in access to employment, the prohibition of corporal punishment, harsh or degrading treatment, the enforcement of legal or industry minimum wage standards and respect for the rights to freedom of association and to collective bargaining.

70. The Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains are similarly comprehensive, having been formulated on the basis of the Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

71. The Independent Expert commends the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters for having developed, through consultative processes, both sets of guidelines, and encourages it to continue its efforts to assist Chinese mining companies to implement the guidelines through training and workshops. He hopes that the guidelines will be a source of inspiration for other Chinese industries to incorporate human rights due diligence into their own policies and business practices.

IV. Human rights impact of external lending and outbound investments

A. Positive effects and good practices

72. By addressing infrastructure backlogs in developing countries, promoting agricultural development and improving medical and health services, China has made an important contribution to social development, including the realization of economic, social and cultural rights. In the period from 2010 to 2012, China assisted 49 agricultural projects and dispatched more than 1,000 agricultural experts to recipient countries, assisted more than 80 projects in the educational sector and provided more than 75,000 scholarships to foreign students to allow them to study in China. It assisted in the construction of some 80 medical facilities, including general hospitals, mobile hospitals and health centres, and

dispatched 55 medical teams with 3,600 medical workers to nearly 120 medical centres in recipient countries. China has also been active in improving access to water supplies, having drilled more than 600 wells and constructed approximately 600,000 m^3 in floor space in affordable housing projects in developing countries. Infrastructure projects have made important improvements to transport systems in developing countries, improved energy supply and IT and telecommunication networks.

73. Several examples illustrate cases where Chinese corporations or their subsidiaries have reportedly managed human rights issues well. In December 2005, the Peruvian subsidiary of the China National Petroleum Corporation, Sino-American Petroleum Development Peru Inc. (SAPET), signed a number of agreements with the Government of Peru to explore for oil in the Peruvian Amazon. Concerns were raised by indigenous federations and non-governmental organizations with regard to the concession granted for block 113, which is located in a territorial reserve established in 2002 by the Ministry for Agriculture for the protection of isolated native tribes, pursuant to a ministerial resolution. Recognizing the legal rights of the indigenous peoples to the land, SAPET initiated a dialogue with all parties concerned with a view to alleviate tensions over the concession, allowing them to participate in the decision-making process. Following a series of consultations, SAPET requested a revision of its contract to accommodate the rights of the indigenous peoples living in voluntary isolation, and decided to stay out of areas of the concession located in the territorial reserve, which amounted to more than half of the oil block.[27]

74. The Belinga hydropower project in Gabon is an inspiring example of how the Expert-Import Bank of China reacted to concerns brought to its attention by civil society. The project was intended to provide electricity for a nearby Greenfield iron ore mine project; however, after being alerted to several environmental and human rights concerns linked to the project – including alleged deforestation, impact on indigenous peoples and on fisheries, lack of transparency and lack of any environmental impact assessment – the bank withdrew financing from the project until the issues were addressed.

B. Challenges and concerns

75. Several infrastructure projects, such as mines, oil wells, pipelines, roads or hydropower dams funded or co-funded by Chinese institutions, do appear to have given rise to concerns. The most frequently reported problems include lack of meaningful consultation with affected populations, labour rights issues, disregard of the rights of indigenous peoples, insufficient resettlement options or compensation packages, forced relocation, health issues caused by emissions, oil spills, water and soil pollution, negative effects on food security caused by destruction of natural resources, such as forests, arable lands and waterways, and concerns relating to lack of transparency.[28]

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[27] Adina Matisoff, "Going Beyond Compliance to Mitigate Risks: CNPC's Engagement with Indigenous Federations in Peru", *Environmental and Social Risk Management of Chinese Transnational Corporations*, Yale School of Forestry and Environmental Studies and WWF, 2014, p. 11.

[28] Concerns have been raised in, inter alia, Friends of The Earth, *Going out, but going green?* (see footnote 26 above); Friends of the Earth and BankTrack, *China Development Bank's overseas investments: an assessment of environmental and social policies and practices*, July 2012; Green Innovation Hub, *China's Mining Industry at Home and Overseas: Development, Impacts and Regulation*, 2014; and The Global Initiative for Economic, Social and Cultural Rights, joint parallel report submitted to the Committee on Economic, Social and Cultural Rights on the occasion of the consideration of the second periodic report of China at the Committee's 52nd session.

76. Projects that have raised concerns include:

- The Gibe III hydropower dam in Ethiopia (alleged lacking meaningful consultation, expected destruction of the livelihood of large indigenous populations along the Omo river, partly due to the destruction of arable lands or the change of flood patterns, strong impact on fisheries around Turkana lake, on which thousands of people rely).[29]
- The Lower Sesan 2 hydropower project in Cambodia (alleged lack of meaningful consultation, reports of expected forced evictions, expected dramatic reduction in fisheries, therefore putting at risk a major source of food for many people in the lower Mekong basin, environmental impact assessment failing to meet international standards).
- The Shwe gas and oil pipelines from Myanmar to China (alleged lack of meaningful consultation, land confiscation, reported violence of the military forces employed in the context of pipeline construction, reported cases of forced labour, negative impact on farmland without appropriate compensation, discrimination against women (for example, in terms of wages paid), and contribution to internal conflict owing to the pipeline route through areas of political and ethical tension).[30]
- The Mirador mine in Ecuador (alleged severe negative effects on indigenous peoples, failure to seek prior, informed consent, destruction of large areas of land inhabited by indigenous nations, including cloud rain forest, plans to store millions of tons of toxic waste close to the Quimi river, thereby putting vast areas of highest biodiversity and consequently livelihoods at risk).[31]
- Agua Zarca and Pactua River hydroelectric dams in Honduras (alleged lack of meaningful participation and of free, prior informed consent of indigenous peoples, forced evictions, violations of the right to food and safe drinking water).[32]
- Mining in the Democratic Republic of the Congo (alleged lack of due diligence in supply chain by Chinese and other foreign business corporations contributing to child labour, hazardous and unhealthy working conditions, forced evictions, and negative impact on the right to food and water for affected communities).[33]
- The Monyawa Project – copper mining in Myanmar (alleged forced evictions from homes and lands, insufficient compensation for loss of farmland and housing,

[29] See A/HRC/18/51, cases CHN 4/2011 and A/HRC/19/44, case CHN 24/2011.

[30] See EarthRights International, "Photo essay: Selected impacts of the Shwe natural gas & Myanmar-China oil transport projects", 2013; and Shwe Gas Movement, "Sold Out: Launch of China pipeline project unleashes abuse across Burma", 2011 For the responses of some of the companies involved in the projects, see Business & Human Rights Resource Centre, "Shwe gas & Myanmar-China oil transport projects (Apr-Jun 2013)". In the view of the Government of China, necessary compensation was provided, and the project company spent $20 million in the field of health, education and culture for residents living along the pipeline.

[31] See Global Alliance, "The case for Rights of Nature in face of the Mirador Open Pit Copper Mining Project", Global Alliance for the Rights of Nature, 26 February 2013; and David Hill, "Chinese banks ignore pleas of Ecuador mining campaigners", chinadialogue, 12 May 2014.

[32] The Global Initiative for Economic, Social and Cultural Rights, joint parallel report (see footnote 28 above), pp. 5-12.

[33] See Amnesty International, "Profits and loss: mining and human rights in Katanga, Democratic Republic of the Congo", June 2013, and "Democratic Republic of Congo: 'This is what we die for': human rights abuses in the Democratic Republic of the Congo power the global trade in cobalt", January 2016; and Global Witness, "Tackling Conflict Minerals: How a new Chinese initiative can address Chinese companies' risks", October 2014.

negative impact on the right to housing and food, lack of genuine and meaningful consultation with affected communities, environmental and social impact assessment and resettlement plan of action allegedly not meeting international standards, and alleged corporate material assistance for police attacking peaceful protesters).[34]

77. The Independent Expert did not undertake in situ visits to receive first-hand information on the above matters; he therefore cannot reach any conclusions on the alleged facts. The reported concerns underline, however, the need for human rights due diligence and to ensure, if necessary, appropriate remedial action.

78. In some cases, infrastructure projects or business operations were taken over by Chinese stakeholders after other investors had withdrawn. Chinese investors occasionally entered local contexts that were already marked by mistrust and lack of dialogue, if not violent conflict between affected communities, project developers, Governments or other stakeholders. In the Independent Expert's view, Chinese investors were not always prepared to operate successfully in such challenging environments already entailing significant human rights risks.

79. In such environments, comprehensive risk and impact assessments covering human rights issues would afford a deeper insight into the operational environment and help in addressing any likely adverse human rights impact or conflicts. They would not only increase the likelihood of successful project implementation but also improve security for local and Chinese workers employed at project sites.

80. Particular care should be taken when lending in contexts where there have been reports on systematic or widespread human rights violations, as the Independent Expert outlined in his thematic report on financial complicity (A/HRC/28/59).

V. Promoting new multilateral development banks

A. New Development Bank

81. In July 2014, China, together with Brazil, the Russian Federation, India and South Africa, agreed to create the New Development Bank, headquartered in Shanghai, with an initial authorized capital of $100 billion. The purpose of the bank, which was formally opened on 21 July 2015, is to mobilize resources for infrastructure and sustainable development projects in participating States and other emerging market economies and developing countries. As at 15 January 2016, the institution had not yet issued draft or final standards on how it would address environmental, social and human rights impact in its lending activities.

B. Asian Infrastructure Investment Bank

82. The Asian Infrastructure Investment Bank has the aim of fostering sustainable economic development, creating wealth and improving infrastructure connectivity in Asia by investing in infrastructure and other productive sectors. It also has the objective of promoting regional cooperation and partnerships in addressing development challenges by working in close collaboration with other multilateral and bilateral development institutions. The bank has an initial authorized capital stock of $100 billion, of which 75 per

[34] Amnesty International, "Myanmar: open for business? Corporate crime and abuses at Myanmar copper mine", February 2015.

cent is available to Asian regional countries. Its singe-largest shareholder is China, which holds a stake of 30.34 per cent in its authorized shares.

83. During his visit, the Independent Expert met with the President-designate of the Asian Infrastructure Investment Bank, and highlighted, inter alia, the need for civil society input into the environmental and social safeguard policies of the bank. The Independent Expert also engaged with the bank and its prospective members by addressing, on 26 October 2015 a letter, co-signed by several other special procedure mandate holders, containing comments on its draft environmental and social framework.[35]

84. In the above-mentioned letter, the human rights experts recalled the contributions that the Asian Infrastructure Investment Bank could make to the realization of economic, social and cultural rights, as well as to the right to development in Asia, by addressing the backlog in infrastructure in the region. In an annex to the letter,[36] they also made detailed comments on how the draft environmental and social framework could be further strengthened to ensure human rights due diligence by the bank and its clients. The Independent Expert welcomes the fact that the bank has decided to undertake a consultation process, which has also allowed civil society organizations to provide comments on the draft environmental and social framework. As at 15 January 2016, consultations were still ongoing and the bank had not published the results of the process or issued a revised framework.

85. The Independent Expert hopes that both the Asian Infrastructure Investment Bank and the New Development Bank will, in the near future, adopt comprehensive safeguard procedures that ensure human rights due diligence and the protection of the rights of affected individuals. The procedures should also include appropriate independent complaint mechanisms to ensure that persons that believe their rights may have been infringed may seek appropriate relief.

VI. Conclusions and recommendations

A. Conclusions

86. **China has become a key player in funding South-South cooperation and providing its partner countries with long-term financing for sustainable development. Over the past decade, foreign aid and outbound investment by China have witnessed unprecedented growth. Through its economic cooperation, China has assisted many partner countries in realizing economic, social and cultural rights. By establishing new multilateral development banks in collaboration with other States, it is providing additional opportunities for funding aimed at addressing infrastructure shortfalls in developing countries.**

87. **Although development projects supported by Chinese financial institutions have brought benefits, some have nonetheless had an adverse environmental, social and human rights impact on certain individuals and communities. The Government of China has responded to this challenge by developing regulations aimed at preventing and mitigating negative environmental and social impact. Indeed, while there has been significant progress in addressing environmental and social impact, a comprehensive framework for ensuring explicitly respect and protection for human**

[35] Available from www.ohchr.org/Documents/Issues/IEDebt/261015_Letter_AIIB.pdf.

[36] Available from www.ohchr.org/Documents/Issues/IEDebt/261015_Letter_AIIB-ANNEX.pdf.

rights in international lending and outbound investment is still lacking. Additional efforts are needed to strengthen the implementation of existing guidelines in operational practices, to improve consultation with affected individuals and communities, and to improve the responsiveness of financial institutions to their concerns. This includes ensuring that affected persons enjoy effective remedies for potential human rights abuses.

B. Recommendations

1. Government

88. **The Independent Expert recommends that the Government of China integrate a more visible and explicit human rights-based approach into its development cooperation and international lending, by:**

(a) **Strengthening further the framework for international lending and investment by incorporating explicitly the guiding principles on foreign debt and human rights and the Guiding Principles on Business and Human Rights into existing regulations;**

(b) **Requiring financial institutions providing project financing and businesses active abroad to establish accessible, operational-level, non-judicial complaint or grievance mechanisms;**

(c) **Taking appropriate legislative and administrative measures to ensure the accountability and legal liability of Chinese companies and their subsidiaries abroad for human rights abuses;**

(d) **Establishing an effective monitoring mechanism to regularly assess the human rights impact of its policies and projects in receiving countries, and to take remedial measures when required;**

(e) **Providing through State institutions, embassies and consulates comprehensive guidance and training for financial institutions and businesses on applicable national and international standards in the fields of human rights, labour, social security, health and the environment in host countries;**

(f) **Encouraging Chinese financial institutions, business associations and businesses to collaborate with international organizations, academic experts and civil society entities in the exchange of good practices and the development of corporate policies with regard to human rights due diligence;**

(g) **Considering including a chapter on business and international lending in future national plans of action on human rights;**

89. **The Independent Expert also recommends that the Government:**

(a) **Continue efforts to ensure that only projects that are economically, socially and environmentally viable are supported, and that loans provided to partner countries can be repaid in the future;**

(b) **Continue to consider favourably applications for debt relief by heavily indebted poor countries that face a debt service burden such that it would undermine their capacity to realize social, economic and cultural rights;**

(c) **Consider endorsing the Principles on Promoting Responsible Sovereign Lending and Borrowing, under which proper due diligence based on the notion of co-responsibility should be put in place.**

2. National and multilateral financial institutions

90. **The Independent Expert recommends that national and multinational financial institutions:**

(a) **Express in public a policy commitment to respect human rights, and include information about actions taken in relation to the said commitment in corporate social responsibility reports;**

(b) **Incorporate the guiding principles on foreign debt and human rights and the Guiding Principles on Business and Human Rights into their environmental and social guidelines;**

(c) **Include human rights into risk analysis and due diligence processes, and conduct human rights impact assessments alongside environmental and social impact assessments prior to making funding decisions;**

(d) **Include systematically human rights, environmental and social clauses in loan agreements to ensure that borrowers or clients are aware of the obligation to abide by host country law and applicable international norms when funding overseas projects;**

(e) **Develop institutional policies related to access to information and information disclosure, and make them publicly available;**

(f) **Enhance compliance with environmental and social guidelines by disclosing publically on corporate websites the following information:**

(i) **Guidelines and institutional policies related to human rights, environmental and social compliance,**

(ii) **Core project information, by country;**

(iii) **Human rights, environmental and social clauses included in loan agreements;**

(iv) **Environmental, social and human rights impact assessments conducted by clients;**

(v) **Relevant mitigation or resettlement plans and evaluation reports on implementation of such plans or agreed measures;**

(vi) **Corrective measures requested from clients in case of non-compliance;**

(g) **Require clients to establish accessible and effective operational-level non-judicial grievance mechanisms that are legitimate, accessible, predictable, equitable, transparent and rights-compatible;**

(h) **Require clients to ensure remediation for any potential adverse human rights impact to which they may contribute;**

(i) **Improve stakeholder consultation and participation by establishing units or officers responsible for engaging with affected individuals, communities or civil society;**

(j) **Consider establishing an independent complaints mechanism to engage in dialogue or to investigate concerns when individuals, groups, communities or other parties believe to have been adversely affected by projects financed by them, and to report publicly thereon on the basis of international best practices;**

(k) **Consider joining the United Nations Global Compact or adopting the Equator Principles.**

3. Asian Infrastructure Investment Bank and New Development Band

91. **The Independent Expert recommends that the Asian Infrastructure Investment Bank and the New Development Bank:**

(a) **Establish (in the case of the New Development Bank) or revise draft (in the case of the Asian Infrastructure Investment Bank) environmental and social safeguard procedures to ensure that financed projects address adequately all forms of adverse human rights, environmental and social impact;**

(b) **Undertake (in the case of the New Development Bank) or continue (in the case of the Asian Infrastructure Investment Bank) consultations with stakeholders, including civil society organizations on institutional policies aimed to avoid and reduce environmental, social or human rights risks.**

(c) **Set standards and develop a mechanism to deal with recipient countries that may face economic or financial problems when repaying loans; a formal space for timely, fair and efficient ways to grant debt relief without egregious conditionalities should be considered.**

4. Partner countries

92. **The Independent Expert recommends that partner countries:**

(a) **Ensure that foreign investments and development projects financed by bilateral or multilateral development banks adhere to national and international norms in the field of human rights;**

(b) **Ensure that international lenders, implementing agencies and business enterprises are adequately informed about and trained in applicable national and international standards;**

(c) **Protect individuals against human rights abuses in accordance with the guiding principles on foreign debt and human rights and the Guiding Principles on Business and Human Rights;**

(d) **Establish effective judicial, administrative and legislative measures to ensure that affected individuals have within their jurisdiction access to an effective remedy;**

(e) **Require lending institutions and their clients to establish accessible and independent grievance mechanisms for affected individuals and civil society organizations representing them at the operational and headquarters levels:**

(f) **Require comprehensive impact assessments for projects that pose any significant social, environmental or human rights risks, and disclose them in an appropriate and accessible format to affected individuals and communities before projects are approved;**

(g) **Require project developers to undertake meaningful consultations with affected individuals and communities before, during and after project implementation;**

(h) **Enforce requirements for free, prior and informed consent of indigenous peoples with regard to development projects affecting them;**

(i) **Strengthen the capacity of public administrations, national human rights institutions and civil society entities to monitor compliance with national and international norms in the fields of human rights, labour and the environment.**

5. Recipient enterprises

93. **The Independent Expert recommends that recipient enterprises:**

(a) Implement the Guiding Principles on Business and Human Rights as far as applicable to enterprises, and in particular:

(i) Carry out appropriate human rights impact assessments;

(ii) Engage in meaningful consultations with potentially affected groups and other stakeholders; and improve stakeholder consultations and participation by establishing units or officers responsible for engaging with affected individuals, communities or civil society entities;

(iii) Provide remedies for any adverse human rights impact caused or contributed to, and establish effective operational-level grievance mechanisms that are legitimate, accessible, predictable, equitable, transparent and rights-compatible;

(b) Consider joining the United Nations Global Compact.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky, on his mission to Greece from 30 November to 8 December 2015. In the present report, the Independent Expert assesses new developments that occurred with respect to human rights concerns arising out of the debt crisis and the economic structural adjustment programmes implemented in Greece since the visit of the previous mandate holder in April 2013.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece**

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** Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council resolution 25/16, the Independent Expert on the effects of foreign debt and other related international obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights conducted an official visit to Greece from 30 November to 8 December 2015, at the invitation of the Government. His visit was in follow-up to the visit of the previous mandate holder to Greece, which took place from 22 to 27 April 2013 (see A/HRC/25/50/Add.1) and during which he assessed the impact of the debt crisis and the structural adjustment programmes on the enjoyment of human rights. The main focus of the visit that is the subject of the present report was to collect recent information on the situation in Greece, which is currently implementing a third adjustment programme on the basis of an agreement between the Government of Greece and the European Commission on behalf of the European Stability Mechanism, signed on 19 August 2015.

2. During the visit, the Independent Expert met with the Deputy Prime Minister; the Minister of Economy, Development and Tourism; the Minister of Health; the Minister of Labour, Social Security and Social Solidarity; and the Alternate Minister for Migration Policy. He also met with senior officials from the Ministries of Education, the Economy, Finance, Foreign Affairs, the Interior and Administrative Reconstruction, Justice and Transparency and Human Rights as well as the Presidents of the Supreme Court and of the Council of State, Members of Parliament and members of the former Truth Committee on Public Debt.[1] His programme included meetings with representatives of the Central Bank of Greece, the European Commission, the International Monetary Fund (IMF), the Greek Ombudsman, the Greek National Commission for Human Rights, trade unions and employer organizations, civil society representatives, academic experts and officials from the Office of the United Nations High Commissioner for Refugees.

3. The Independent Expert thanks the Government of Greece for extending an invitation to him and for its full cooperation throughout the visit. He wishes to express his appreciation to all of his interlocutors for having taken time to meet him and engaged in an open and frank dialogue.

4. In follow-up to his visit to Greece the Independent Expert intends to undertake an official visit to institutions of the European Union during 2016.

II. Current context

5. Since May 2010, the Government of Greece has been implementing an economic adjustment programme as a precondition for securing financing packages from the International Monetary Fund, the European Commission and the European Central Bank, also known as the "troika" or "the institutions". On the European side, eurozone countries established the European Financial Stability Facility, and later the European Stability Mechanism, as vehicles through which financial support is provided. The programmes consist of stringent policy measures that entail deep public spending cuts, public sector job cuts, tax increases, the privatization of public enterprises and structural reforms, which are aimed at reducing the country's fiscal deficit. As noted by the previous mandate holder and more recently by the Committee on Economic, Social, and Cultural Rights, past adjustment programmes had significant regressive impacts on in the enjoyment of human rights in

[1] Officially dissolved in November 2015.

Greece, in particular in the field of economic, social and cultural rights.[2] An updated overview of some of these adverse impacts is provided in section V of the present report.

6. A number of changes have taken place since the visit of the previous mandate holder. In January 2015 a new Government was elected in Greece, largely on the basis of an agenda to end austerity. Not having completed the second economic adjustment programme (see A/HRC/25/50/Add.1, para. 24), the fiscal space of the new Government was very limited, as all expenditures and debt service had to be financed domestically, limiting de facto the ability of the Government to undertake any major reform with fiscal implications without the consent of the institutions and risking default.

7. In an effort to mitigate the particularly harsh impacts of the economic crisis on certain rights holders, in March 2015 the new Government introduced Law 4320/2015, which included certain "immediate measures to address the humanitarian crisis". The law provided persons and families living in poverty free electricity up to 1,200 kwh/month, a housing benefit (limited to not more than 31,369 households) and a food stamps programme. The Independent Expert welcomes these measures; however, there is consensus that with budgetary costs estimated at 0.1 per cent of gross domestic product (GDP),[3] the measures will not be able to address in a holistic manner problems related to the affordability of the rights to housing or food for the increasing number of persons living in poverty in Greece.

8. During the first half of 2015 an uneasy relationship between the Government of Greece and its eurozone partners evolved owing to differences about how to deal with the ongoing financial and economic crisis. The partners largely insisted that Greece fully implement adjustment measures that previous Governments had agreed to without further delaying their implementation, ruling out any further debt cancellation. The Government continued to stress the need for debt relief.

9. No breakthrough could be reached in several rounds of negotiations, while the financial situation in Greece became increasingly dramatic. The Independent Expert issued a media statement on 2 June 2015 in which he urged the European institutions, IMF and the Government of Greece to show courage and reach an agreement. He expressed concern that without a compromise, Greece could sooner or later default, thereby worsening the crisis. The Independent Expert notes that economic and social rights could be further undermined in Greece by lack of flexibility and the courage to strike a mutually beneficial deal that respects human rights. He stresses the need to find better solutions to prevent economic reform policies undermining the enjoyment of human rights and urges that the burden of adjustment be shared in a fair manner and comply with the obligations that Greece and creditor States have assumed under the International Covenant on Economic, Social and Cultural Rights, the European Social Charter and other international human rights standards.[4]

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[2] See A/HRC/25/50/Add.1 and E/C.12/GRC/CO/2; see also concluding observations by other treaty bodies (CCPR/C/GRC/CO/2, paras. 7-10; CRC/C/GRC/CO/2-3, paras. 6, 18, 21, 28 and 29; CEDAW/C/GRC/CO/7, paras. 6, 28 and 40), European Parliament, *The Impact of the Crisis on Fundamental Rights across Member States of the EU: Country Report on Greece* (2015) and International Federation for Human Rights, *Downgrading Rights: The Cost of Austerity in Greece* (Paris, 2014).

[3] European Parliament, *Employment and Social Developments in Greece* (2015), p. 35.

[4] Office of the United Nations High Commissioner for Human Rights (OHCHR), "Greek crisis: human rights should not stop at doors of international institutions, says UN expert", 2 June 2015, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16032&LangID=E.

10. While efforts to secure a deal continued, on 5 June 2015 Greece postponed a $300 million debt repayment to IMF to the end of the month, raising fears that the country was again close to insolvency. Neither the Summit of European Union Heads of State convened on 22 June 2015 nor subsequent discussions at the Eurogroup level resulted in an agreement acceptable to all parties. On 26 June 2015 the Government of Greece announced that it would hold a referendum asking for a yes or no vote on proposals made by the institutions, which included various adjustment measures and structural reforms, including further cuts to pensions and social welfare expenditure.

11. The referendum, held on 5 July 2015, resulted in 61.3 per cent voting "no" on the bailout conditions offered earlier by the institutions; the voter turnout was 62.5 per cent. At the same time, Greek public opinion continued to show strong support for keeping the euro as its currency.

12. Following the referendum, the Government decided to continue negotiations to avoid default and a possible exit from the European area. A new government proposal for a bailout package was endorsed by the Hellenic Parliament and on 12 July 2015, agreement was reached between the Greek authorities and eurozone leaders to negotiate a third memorandum of understanding, on the condition that the Parliament adopted upfront certain "trust-building measures". In this context, the Independent Expert urged Greece and European institutions not to adopt further austerity measures at the cost of human rights, and expressed concern that some of the measures could be incompatible with international human rights law.[5]

13. The third economic reform programme, including additional loans of €86 billion over the period 2015-2018 and detailed adjustment and structural reform measures, was outlined in a memorandum of understanding.[6] However, during the vote in Parliament on the first set of measures (Law 4336/205), the Government lost its majority and had to rely on opposition parties for the adoption of the package, reflecting a defection by a number of lawmakers from the ruling Syriza party, who rejected the terms of the memorandum of understanding. A snap election was called for 20 September 2015, which resulted in a majority for the Syriza-Independent Greek coalition Government.

14. The deal between the eurozone States and Greece included a European Commission-funded Jobs and Growth Plan for Greece to support Greece over the 2014-2020 period with €35 billion provided through various European funds. About €3.9 billion, or 11 per cent of the entire package, are expected to be spent on active labour market and social inclusion policies, including the Youth Employment Initiative.

15. Since January 2015, another humanitarian and human rights crisis has been unfolding in Greece. An unprecedented influx of refugees and migrants has arrived on its territory, most of them fleeing conflict in Afghanistan, Iraq and the Syrian Arab Republic,. According to the Government, almost 950,000 refugees and migrants travelled through Greek-Turkish sea borders in 2015, while more than 66,000 arrived in January 2016. At least 272 migrants died in Greek territorial waters during the dangerous journey from Turkey to Aegean islands in 2015, and more than 150 were reported missing.[7] Greece increased its efforts, including 2,500 search and rescue operations by the Hellenic Coast Guard, to rescue refugees fleeing war, crossing the Mediterranean in unseaworthy boats and

[5] Media statement, 15 July 2015, available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16238&LangID=E.

[6] Available from http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/pdf/01_mou_20150811_en.pdf.

[7] Office of the United Nations High Commissioner for Refugees (UNHCR). Information available from http://data.unhcr.org/mediterranean/country.php?id=83.

dinghies. The State has provided aid and encouraged solidarity and support from the local population. It also demonstrated flexibility in its policy towards refugees and irregular migrants, including by reducing administrative detention. However, owing to austerity and the economic crisis, the Greek State is in a difficult position and cannot respond adequately to the refugee crisis without additional European and international aid.

III. Human rights obligations in the context of economic adjustment

A. Obligations of Greece

16. When implementing structural adjustment measures, borrowing and lending States and lending institutions have obligations under international human rights law. Economic adjustment policies may raise important concerns regarding the protection of economic, social and cultural rights as they may be incompatible with the obligation of States to ensure that every individual enjoys an essential minimum level of such rights, or incompatible with the obligation to ensure their progressive realization and to avoid deliberate retrogressive measures.

17. The Committee on Economic Social and Cultural Rights has recognized that economic and financial crises impede the progressive realization of economic, social and cultural rights and can lead to retrogression in the enjoyment of those rights. With respect to austerity measures and other economic adjustment policies, the Committee underscored four requirements that any proposed policy change should meet. First, the policy must be temporary and limited to the period of crisis; second, the policy must be necessary and proportionate; third, the policy must not be discriminatory and must encompass all possible measures, including fiscal measures, to mitigate inequalities that may arise in times of crisis; and fourth, the policy must identify the minimum core content of the rights enshrined in the Covenant, or a social protection floor, as developed by the International Labour Organization (ILO), and ensure the protection of the core content at all times.[8] In addition, States bear the burden of ensuring that austerity measures are introduced only after the most careful consideration of all other less restrictive alternatives (see E/2013/82, para. 18).

18. The guiding principles on foreign debt and human rights (A/HRC/20/23) also underscore that States should ensure that their rights and obligations arising from external debt agreements or arrangements do not hinder the progressive realization of economic, social and cultural rights.

B. Obligations of European institutions, the International Monetary Fund and eurozone States

19. While Greece holds primary responsibility for ensuring that human rights are protected within its territory, the obligations to protect, respect and fulfil human rights are also applicable to multilateral institutions, including international financial institutions, and States when deciding on conditionalities and adjustment measures attached to lending. States retain their international human rights law obligations when they participate in multilateral institutions or exercise effective control over lending institutions such as the European Financial Stability Facility. International institutions acting on behalf of member

[8] Letter dated 16 May 2012 from the Chair of the Committee on Economic, Social and Cultural Rights addressed to States parties to the International Covenant on Economic, Social and Cultural Rights.

States, such as the European Stability Mechanism, the European Commission, the European Central Bank or IMF, must, in the first instance, ensure that their policies respect international human rights standards. The guiding principles on foreign debt and human rights capture the content of those obligations.

20. It is recognized that States acting alone, jointly with others or through international organizations have human rights obligations beyond their own borders. Extraterritorial human rights obligations have been reaffirmed by United Nations treaty bodies in their general comments and in an increasing number of concluding observations[9] and in the guiding principles on foreign debt and human rights.

21. According to the Treaty on the European Union, the European Union and its institutions are committed "to the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities" (art. 2) and "shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child" (art. 3 (3)). The institutions of the European Union, including the European Commission and the European Central Bank, are also bound to comply with the requirements of the Charter of Fundamental Rights of the European Union, which includes, among others, the rights to fair and just working conditions, social security and social assistance and health care.[10]

22. While it should be noted that with the exception of the Convention on the Rights of Persons with Disabilities, the European Union is not party to international human rights treaties, institutions of the European Union are nevertheless bound to comply with the human rights enumerated in the Universal Declaration of Human Rights or which are part of customary international law or reflect general principles of international law.

23. It is the view of the Independent Expert that the European Commission remains bound by the full extent of European Union laws and the Charter of Fundamental Rights of the European Union and has to protect and respect the human rights enumerated therein, including when it acts on the basis of the treaty establishing the European Stability Mechanism.[11] In addition, the European Stability Mechanism itself has to protect and respect the human rights enumerated in the Charter, given that despite having a legal basis separate from the treaties, it constitutes a vehicle for the exercise of public authority in the

[9] See Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999) on the right to adequate food, paras. 36-39; general comment No. 15, paras. 30-36 and general comment No. 19 (2003) on the right to water, paras. 52-58; and concluding observations relating to Austria (E/C.12/AUT/CO/4), paras. 11-12; Belgium (E/C.12/BEL/CO/4), para. 22; China (E/C.12/CHN/CO/2), paras. 12-13; Germany (E/C.12/DEU/CO/5), paras. 9-11; and Switzerland (E/C.12/CHE/CO/2-3), para. 24. Similar general comments and concluding observations relating to the extraterritorial application of international human rights treaties have been adopted by other treaty bodies.

[10] Treaty on the European Union, article 6 (1); Charter of Fundamental Rights of the European Union, arts. 26, 27, 31, 34 and 35.

[11] See also the view of Advocate General J. Kokott delivered on 26 October 2012 at the Court of Justice of the European Union in case C-370/12, *Pringle v. Ireland,* para. 178; M. Salomon, "Of austerity, human rights and international institutions", *European Law Journal*, vol. 21, No. 4 (July 2015); and O. De Schutter and M. Salomon, "Economic political conditionality, socio-economic rights and international legal responsibility: the case of Greece 2010-2015", legal brief prepared for the Special Committee of the Hellenic Parliament on the Audit of the Greek Debt, June 2015.

framework of the eurozone, as referred to in article 136 (3) of the Treaty on the Functioning of the European Union.[12]

24. The Independent Expert welcomes the provision in European Union regulation 472/2013 that "budgetary consolidation efforts set out in the macroeconomic adjustment programme shall take into account the need to ensure sufficient means for fundamental policies, such as education and health care" (art. 7 (7)); however it should be noted that the regulation makes no explicit reference to economic, social and cultural rights, except that the adjustment programme shall respect the right of collective bargaining and action (arts. 1 (4) and 7 (1)).

25. IMF is bound to act in compliance with general international law, including human rights provisions. As a specialized agency of the United Nations, IMF is bound to act in accordance with the principles of the Charter of the United Nations, which refers to the realization of human rights and fundamental freedoms as one of the purposes of the Organization, to be achieved in particular through international economic and social cooperation.

C. Procedural obligations: human rights impact assessments and right to participation

26. According to the guiding principles on foreign debt and human rights, "Lenders should not finance activities or projects that violate, or would foreseeably violate, human rights in the Borrower States. To avoid this eventuality, it is incumbent upon lenders intending to finance specific activities or projects in Borrower States to conduct a credible Human Rights Impact Assessment ... as a prerequisite to providing a new loan" (A/HRC/20/23, para. 40). Similarly the guiding principles on extreme poverty and human rights require carrying out human rights impact assessments; this obligation pertains as well to States implementing policy measures within their jurisdiction based on international agreements (A/HRC/21/39, paras. 61 and 92).

27. In the context of the adjustment programmes implemented in Greece, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Independent Expert and the Greek National Commission for Human Rights had recommended to the Government of Greece and to the lending institutions that human rights impact assessments be conducted.[13]

28. It should be noted that the European Commission has also set out guidelines for undertaking systematic human rights or social impact assessments of its own legislative proposals and developed methodologies for conducting human rights impact assessments of

[12] A. Bogdandy and M. Goldmann, "Sovereign debt restructurings as exercises of international public authority: towards a decentralized sovereign insolvency law", in C. Esposito, Yuefen Li and J. P. Bohoslavsky, eds., *Sovereign Financing and International Law: The UNCTAD Principles on Responsible Sovereign Lending and Borrowing* (New York, Oxford University Press, 2013), p. 39.

[13] See CRC/C/GRC/CO/2-3, para. 29; CEDAW/C/GRC/CO/7, para. 40, E/C.12/GRC/CO/2, paras. 14, 24 and 32; A/HRC/25/50/Add.1, para. 91; Greek National Commission for Human Rights, "Impact assessment on human rights as an instrument for the protection of human rights in times of crisis" (in Greek), available from www.nchr.gr/images/pdf/apofaseis/oikonomikh_krish/Dilwsi_EEDA_%20metra_litotitas_2015.pdf.

its external policies,[14] but has so far failed to undertake any meaningful human rights impact assessments when designing the adjustment programmes.

29. The adjustment programmes implemented in Greece have also raised issues relating to the human rights principles of transparency, participation and accountability (see A/HRC/20/23, paras. 28-32). For example the European Parliament in a resolution denounced the lack of transparency in the negotiations on the memorandum of understanding, noting the need to evaluate whether formal documents were clearly communicated to and considered in due time by the national parliaments and the European Parliament and adequately discussed with the social partners. The Parliament also regretted the general "weak democratic accountability" of the troika, noting that when consulted, national parliaments were faced with a choice between eventually defaulting on their debt or accepting memorandums of understanding negotiated between the troika and national authorities, thus leaving only limited scope for public scrutiny or changing or improving adjustment programmes.[15]

30. It should be noted that European Union regulation 472/2013 now contains an article requiring member States undergoing adjustment to "seek the views of social partners as well as relevant civil society organisations when preparing its draft macroeconomic adjustment programmes, with a view to contributing to building consensus over its content" and recommends that "Member States should involve the social partners and civil society organisations in the preparation, implementation, monitoring and evaluation of financial assistance programmes, in accordance with national rules and practice." While the July 2015 referendum and the snap elections of September 2015 did to a certain extent allow the general public in Greece to express their views, concerns about the lack of adequate consultation and participation have remained, as negotiations between the institutions and the Government continue to take place largely behind closed doors. There is also a widely felt lack of ownership in the economic reforms implemented in Greece since 2010 as they are regarded as imposed from outside.

IV. Structural adjustment in Greece

A. Excessive austerity

31. By slashing public expenditure and internal demand, the first and second structural adjustment programmes significantly deepened the Greek economic crisis. GDP fell by about 25 per cent during the period 2008-2013 and growth rates have remained at about 0 per cent since 2014. According to economic forecasts, a further drop in GDP of 0.7 per cent is expected in 2016, followed by modest growth of 2.7 per cent in 2017, based on the assumption that adjustment measures will finally have the desired positive impact on the economy.

32. Under the austerity packages of 2010 and 2012, there were unprecedented cuts in government expenditure. According to Eurostat data accessed on 30 January 2016,[16]

[14] European Commission, "Operational guidance on taking account of fundamental rights in Commission impact assessments", document SEC(2011) 567 final, 6 May 2011; European Commission, "Guidance for assessing social impacts in the Commission impact assessment system", 17 November 2009; European Union Action Plan on Human Rights and Democracy (2015-2019): "Keeping human rights at the heart of the EU agenda", document JOIN(2015) 16 final, 28 April 2015.

[15] Resolution 2013/2277(INI) of 13 March 2014, paras. 30 and 56.

[16] Slightly revised data for general government expenditure 2009-2013, including new data for the year 2014, was released by Eurostat after completion of the report. Revised Eurostat figures do not affect

general government expenditure was reduced from €128 billion to €108 billion during the period 2009-2013, reflecting cuts of 15.7 per cent, a figure that significantly surpassed similar reductions in other eurozone countries undergoing adjustment: 11.3 per cent in Ireland, 5.9 per cent in Spain and 2.7 per cent in Portugal.

33. The Independent Expert is concerned in particular that social protection expenditures were not sheltered at a time when they were most needed for covering an increasing number of persons in situation of vulnerability; instead, social protection expenditure was cut by 21.3 per cent from 2009 to 2013 (see table). This counters the overall trend in the eurozone, which saw an increase in social protection expenditure of 8.4 per cent during the same period (Portugal and Spain increased their social protection spending by 9.1 per cent and 6.8 per cent, respectively).

General government expenditure in Greece, by function, 2009-2013
(Millions of euros)

General government expenditure	*2009*	*2010*	*2011*	*2012*	*2013*	*Percentage change 2009-2013*
Total general government expenditure	**128 150**	**117 774**	**111 633**	**104 491**	**108 009**	**-15.7**
General public services	28 365	27 590	26 672	20 796	17 645	-37.8
Social protection	44 473	42 908	42 422	39 799	34 997	-21.3
Old age	30 794	30 516	30 218	29 731	26 274	-14.7
Sickness and disability	3 974	3 919	3 682	3 435	2 680	-32.6
Survivors	3 645	3 365	3 385	3 395	2 751	-24.5
Family and children	2 342	2 361	1 384	1 178	1 201	-48.7
Unemployment	2 377	2 266	3 241	1 840	1 668	-29.8
Housing	817	145	200	45	209	-74.4
Social exclusion	189	81	160	71	36	-81.0
Economic affairs	12 735	9 805	8 398	12 987	27 535	116.2
Health	16 089	15 393	13 314	11 079	9 249	-42.5
Hospital services	9 696	9 308	7 483	6 722	5 639	-41.8
Medical products, appliances and equipment	5 230	5 063	4 708	3 680	2 658	-49.2
Outpatient services	770	745	800	452	740	-3.9
Education	9 636	9 007	9 164	8 607	8 189	-15.0
Pre-primary and primary education	3 027	2 789	2 878	2 667	2 502	-17.3
Secondary education	3 653	3 348	3 280	2 940	2 610	-28.6
Tertiary education	2 128	1 937	1 894	1 856	1 632	-23.3
Defence	8 167	5 768	4 960	4 607	3 881	-52.5

the described trends for 2009-2013. In 2014, total general government expenditure was further reduced to €88 billion, reflecting a reduction of 31 per cent during the last six years (2009-2014) Social protection expenditure was slightly increased in 2014 (€ 35.7 billion) compared to revised figures for 2013 (€ 35.3 billion), while public expenditure on health and education was further reduced in 2014 to €8.2 billion and €7.8 billion respectively (data accessed 20 April 2016).

General government expenditure	*2009*	*2010*	*2011*	*2012*	*2013*	*Percentage change 2009-2013*
Public order and safety	4 237	4 036	3 587	3 539	3 357	-20.8
Environmental protection	2 004	1 564	1 445	1 396	1 462	-27.0
Recreation, culture and religion	1 560	1 257	1 287	1 265	1 180	-24.4
Housing and community amenities	884	446	384	416	514	-41.9

Source: Eurostat, General government expenditure by function (gov_10a_exp), data accessed on 30 January 2016. Subcategories are selective.

34. The limited funds that had been available to combat social exclusion and for rental and other housing support and family and child benefits were reduced drastically. Spending to support sick persons and persons with disabilities also decreased disproportionately, while pension benefits — the biggest social expenditure and backbone of the social protection system of Greece — were cut consecutively in line with the overall reduction of government expenditure. Unemployment benefits fell by nearly one third while at the same time the number of unemployed rose by nearly threefold. In analysing the development of social protection expenditure, it can be seen that, sadly, reductions were particularly harsh for the most marginalized, who lacked any strong political lobby.

35. Public health expenditures fell in an unprecedented manner, from €16.1 billion in 2009 to under €9.3 billion in 2013, 42.5 percent over the five-year period. At the same time, demand for public health-care services increased, as more people could no longer afford private health care. No one disputes that a reform of the Greek public health care system was overdue and that cost reduction measures needed to be taken to improve its efficiency or to reduce the cost of medicines. However, figuratively speaking, one could say that the excessive austerity in the public health care sector first killed the nurses and doctors before even getting to the patients. Although efforts were made to minimize the impacts on health service delivery to rights holders , it was impossible to undertake such drastic cuts in such a short period without jeopardizing the right to health in all its dimensions, including accessibility, affordability, acceptability and quality.

36. Expenditure on education decreased dramatically between 2009 and 2013; in particular spending on secondary schools decreased by 28.6 per cent. It should be noted that heavy cuts were also made in the area of general public services, resulting in salary reductions, hiring freezes and other cost-saving measures. While defence expenditure per capita remained above the eurozone average, significant cost-saving measures were also undertaken in this field, along with reduced expenditures for the police, fire brigades, the justice sector, culture, religious affairs, housing and community amenities. The only category of government expenditure that increased was economic affairs, reflecting the immense cost of recapitalization of Greek banks in 2013.

B. Adjustment measures envisioned under the third economic reform programme

37. From a human rights point of view, the most sensitive contents of the third economic programme include the pension reform, aimed at further reducing spending on pensions by 1 per cent of GDP, and a social welfare review that will generate further reductions by 0.5 per cent of GDP in public social spending.

38. While the Independent Expert fully supports efforts to redirect social welfare benefits to protect the most vulnerable, he would like to question the need for further cuts in social welfare spending of about €887 million per annum in the context of significantly increased poverty and social exclusion in Greece. In his view, such reductions on top of earlier cuts are incompatible with the obligation to ensure that all persons in Greece can enjoy at least core minim essential levels of social and economic rights and are incompatible with the obligations contained in article 2 (1) of the International Covenant on Economic, Social and Cultural Rights.

39. The planned introduction of a guaranteed minimum income scheme, which is intended to close large gaps in the Greek social welfare net, should already have been a priority of reform in 2011 and 2012 to counter the adverse human rights impacts of adjustment. The Independent Expert is, however, worried that this important reform will be implemented in a "fiscally neutral manner". That would mean that either the scheme will not reach all in need, or that individual levels of benefit could fail to fulfil the intended function of securing economic and social rights by raising recipients out of poverty and destitution.

40. The Independent Expert welcomes the expansion of the guaranteed employment support schemes in the adjustment programme from 50,000 persons to 150,000 persons by March 2016, targeting the long-term unemployed, young people and disadvantaged groups. The schemes will support job creation and include training combined with employment. He is, however, concerned that this measure alone will be insufficient to significantly reduce the number of unemployed, currently estimated at more than 1.1 million.

41. The memorandum of understanding furthermore envisions an assessment of the Greek educational system to identify the scope for further rationalization of classes, schools and universities. The adjustment programme also includes various actions to fight tax evasion and corruption and to improve the collection of tax debt and outstanding social security contributions. While these are laudable goals, they can carry human rights risks if they increase the vulnerability of overly indebted poor individuals and households that are unable to fully repay these debts.

42. In the field of justice, a selective increase in court fees and the adoption of measures to address the backlog of cases in the administrative and civil courts are planned. The main focus appears to be on speeding up justice. That would be a positive result, but it could also produce problematic outcomes if it involved limiting due process guarantees or imposing barriers to justice through prohibitive court fees. On the positive side, the adjustment programme requires the Government to propose ways to ensure that persons in vulnerable situations have better access to justice.

C. Social impact assessment of the European Commission

43. The Independent Expert welcomes the publication of a social impact assessment for the third adjustment programme by the European Commission in August 2015.[17] However, he regrets that the document fails to evaluate the social impacts caused by the first and second adjustment programmes and thus fails to draw any lessons from what went wrong.

44. The social impact assessment is not a human rights assessment. It does not make any reference to human rights, rulings by the Greek Council of State or recommendations by the Greek National Commission for Human Rights, or to the comprehensive country study

[17] European Commission, "Assessment of the social impact of the new Stability Support Programme for Greece", document SWD(2015) 162 final, 19 August 2015.

carried out on behalf of the European Parliament on the impact of the crisis on fundamental rights in Greece. It does not consider the views of the Council of Europe, the European Committee of Social Rights, which monitors the implementation of the European Social Charter, or findings and recommendations of human rights mechanism of the United Nations, including those of the previous mandate holder.

D. Debt sustainability

45. Analyses of the sustainability of the Greek debt have a history of misdiagnosis; each subsequent assessment projects a higher debt-to-GDP ratio than the last. There have also been notable differences in the projections made by IMF and the European Commission.[18] With a debt-to-GDP ratio estimated to peak at 200 per cent, only very few economists claim that the extremely large Greek public debt is sustainable. While loans now include extremely long periods of maturity and grace periods on interest, the problem of servicing the debt will come up sooner or later. The Independent Expert shares the view articulated by IMF in July 2015 that further debt relief is needed owing to the serious unsustainability of the Greek public debt. According to IMF, Greece is likely to face debt service payments in excess of 15 per cent of GDP, which could be controlled only by annual grants to the government budget, dramatic extensions of grace periods to 30 years on all European debt and/or "deep" upfront haircuts.[19] A few months later, the sustainability of the debt was seen by the institutions to be a lesser problem, without their specifying the assumptions that had changed to justify such a view.

46. In the view of the Independent Expert, it would be more beneficial to agree on debt relief earlier rather than postpone it artificially, taking into consideration evidence that economic recovery after debt crises is more robust if sufficient debt relief is granted in a timely fashion in the form of debt write-offs rather than maturity extensions and interest rate reductions.[20] In the end, such a step would be in the interest of all parties as it increases the likelihood that the restructured debt can actually be repaid.

E. Truth Committee on Public Debt

47. The previous mandate holder had recommended undertaking a debt audit (see A/HRC/25/50/Add.1, para. 92 (c)). The recommendation was implemented by a committee established by a decision of the former President of the Hellenic Parliament. The Truth Committee on Public Debt published an interim report analysing the evolution and composition of the debt and the conditionalities imposed on loan agreements. The interim report also discussed the human rights impact of the debt and provided a legal assessment of the memorandums and loan agreements.[21] In the view of the Truth Committee, the Greek debt was not only unsustainable, but illegitimate, illegal and odious as loan agreements had disrespected proper legal procedures provided for by domestic law. The Committee issued a

[18] J. Schumacher and B. Weder di Maruo, "Diagnosing Greek debt sustainability: why is it so hard?", Brookings Institution, Policy Panel on Greece, Brookings Papers on Economic Activity, September 2015.

[19] See IMF, "Greece: an update of IMF staff's preliminary public debt sustainability analysis", IMF country report No. 15/186, 14 July 2015.

[20] C. M. Reinhart and C. Trebesch, "Sovereign debt relief and its aftermath", Harvard Kennedy School of Government Faculty Research Working Paper Series RWP15-028, June 2015.

[21] See, for example, Hellenic Parliament, *Truth Committee on Public Debt: Preliminary Report* (18 June 2015), available from www.hellenicparliament.gr/en/Enimerosi/Grafeio-Typou/Deltia-Typou/?press=f660f87e-9410-414c-9476-a4bb016e6c48.

second report in July 2015 criticizing the August 2015 memorandum of understanding and loan agreement, inter alia on the grounds that the former contradicted the outcome of the referendum held on 5 July 2015.[22]

48. In the present report the Independent Expert decided not to analyse the complex legal questions of alleged "illegitimacy" or "odiousness" of the Greek public debt. In his view, sufficiently sound arguments for debt relief can be based on the unsustainability of the Greek public debt[23] and on human rights arguments, as lenders should not reasonably and legitimately expect to be repaid in full when this would result ultimately in the denial of human rights.

49. Although the Truth Committee on Public Debt was formally dissolved in November 2015, there is a need to continue to draw lessons from the past, including in the field of establishing better judicial and administrative accountability for government officials and decision makers in the private sector, who contributed to the debt crisis. The work of the Special Investigation Commission of the parliament in Iceland that was established after the banking collapse in that country could provide inspiration in that respect.

F. Response of national judicial and non-judicial protection mechanisms

50. Several laws implementing austerity measures were challenged in court. While courts followed a more cautious approach initially, more recent judgments mark a stronger disjuncture. In 2012 the Supreme Administrative Court declared impermissible the practice of cutting consumers' electricity supply if they failed to pay certain taxes that were collected through electricity bills. In 2014 the Court declared certain retroactive pension cuts and salary reductions for the armed forces and police unconstitutional (judgments Nos. 2192-2196/2014). More recently, it also declared unconstitutional certain cuts to the main and supplementary pensions that had been enacted in 2013 (judgments Nos. 2287-2290/2015).

51. The Independent Expert would like to encourage the Greek judiciary to rely more frequently on international and regional human rights standards in their adjudication. He recommends improving access to justice for marginalized groups of society.

52. In this regard, it should be noted that the Greek Ombudsman plays an important role as an independent authority to protect the rights of citizens, ensure compliance with rule of law and combat maladministration. Complaints submitted to the Greek Ombudsman have significantly increased during the financial crisis (2012, 11,702 complaints; 2014, 16,339 complaints). In particular, complaints related to social protection, welfare and taxation increased. The Ombudsman also intensified efforts to address systemic problems reflected in complaints by stressing in his reports to Parliament the need to ensure that the national legislation implementing adjustment measures complied with human rights standards. In his interventions the Ombudsman continuously underlined the need to strengthen social welfare and services for vulnerable groups, find effective ways to secure access by all citizens to health services, relieve poor persons from heavy tax burdens or unbearable personal debt repayment terms and prevent the interruption of electricity and water supply to impoverished households.

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[22] Available from http://greekdebttruthcommission.org/assets/porisma2_en.pdf.

[23] J. P. Bohoslavsky and M. Goldmann, "An incremental approach to sovereign debt restructuring: sovereign debt sustainability as a principle of public international law" and M. Riegner, "Legal content and consequences of sustainability as a principle in sovereign debt restructuring", *Yale Journal of International Law Online*, 2016 (forthcoming).

53. Similarly, the Greek National Commission for Human Rights, voiced its concerns about violations of social rights, mounting barriers to access to justice and the lack of adequate consideration of recommendations and decisions of national, European and international human rights monitoring bodies in relation to the implementation of austerity measures and economic reform policies in Greece. The Commission is concerned that the drastic cuts in social expenditure will undermine the ability of the State to guarantee basic economic and social rights. In a statement issued on 15 July 2015, it expressed concerns about the dismantling of the welfare State, an increase in extremist and intolerant elements within society and lack of capacity of the Greek State to fulfil its human rights obligations in the context of immigration and the management of refugee flows.

54. The Independent Expert regrets that the concerns and recommendations of the Greek Ombudsman and the Greek National Commission for Human Rights have not been taken into account by European and national stakeholders in the design and implementation of the economic adjustment programmes. In his view both bodies need to be further strengthened if they are to fulfil their mandates. In particular, the Commission needs to be adequately staffed to carry out its important functions.

V. Impact of the economic reform programmes on the enjoyment of human rights

55. The previous mandate holder highlighted in his report (A/HRC/25/50/Add.1) the impact of austerity measures on the enjoyment of human rights, in particular, the rights to work, social security, health and adequate housing. . The concerns raised persist today.

A. Right to work and to favourable conditions of work

56. Since the beginning of the crisis, an estimated 230,000 small and medium-sized enterprises have shut down in Greece, leading to the loss of more than 600,000 jobs.[24] The economic adjustment programmes directly contributed to rising unemployment by shrinking the size of the public sector by 234,847 employees between 2009 and end of November 2015, a reduction of 26 per cent.[25]

57. Overall, about one million jobs have been lost since the beginning of the crisis, resulting in an unprecedented unemployment rate of 27.5 per cent in 2013, dropping only slightly to 24.0 per cent during the third quarter of 2015.[26] Unemployment among women has remained 6.5 per cent higher than among men and youth (ages 15-24) unemployment remains at 48.8 per cent, an inacceptable proportion that undermines the prospects of an entire generation. Jobseekers have increasingly to accept part-time or unstable work. The number of persons who have never worked reached 23.6 per cent of all unemployed persons and 73.7 per cent of those out of work are long-term unemployed. No significant reduction of unemployment is forecast for 2016-2017.

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[24] Hellenic Confederation of Professionals, Craftsmen and Merchants and others, "Assessment on macroeconomic performance of Greece and impact on SMEs", report submitted to the Independent Expert.

[25] See European Parliament, *Country Report on Greece*, p. 83 and http://greece.greekreporter.com/2015/12/31/234857-employees-leave-the-public-sector-due-to-economic-crisis/.

[26] The Independent Expert would like to thank the Ministry of Labour, Social Security and Social Solidarity for its detailed submission of the most recent information on the labour market based on Eurostat and Hellenic Statistical Authority data, from which this information is taken.

58. The Independent Expert remains concerned that the reduced level of the minimum wage, required by the second economic adjustment programme, in particular the reduction of 32 per cent for young workers, is not sufficient to provide workers and their families with a decent living and violates article 7 (a) (ii) of the International Covenant on Economic, Social and Cultural Rights. He is similarly concerned that the new legal framework for collective bargaining introduced as part of the economic reform programme may put employees in a disadvantaged position in the determination of wages and working conditions by direct negotiation.

59. The Independent Expert welcomes efforts by the Government, implemented with funding from the European Union, to target young unemployed persons and assist businesses in dynamic sectors of the economy to provide guaranteed employment. Given the number of unemployed, the Independent Expert is of the view that a more comprehensive job creation programme reaching more beneficiaries is urgently needed.

B. Right to social security

60. Of particular concern to the Independent Expert are the drastic cuts in social security benefits, including restrictive entitlements, implemented as part of the austerity measures. The current coverage and level of social security and social welfare benefits are inadequate to ensure a decent living for many rights holders and are not in line with the right to social security. For example, only about 10 per cent of all registered unemployed persons are actually receiving unemployment benefits.

61. The Independent Expert is concerned that over 3.8 million people in Greece (36 per cent of the population) are at risk of poverty or social exclusion, as indicated by the 2014 Survey on Income and Living Conditions.[27] This is the highest rate in the eurozone. It is even more worrying that 71.5 per cent of foreign nationals of countries outside the European Union aged 18-64 and living in Greece are at risk of poverty or social exclusion.

62. In 2014 an estimated 2.4 million individuals were at risk of income poverty; that means that they had to live on less than €12.63 per day if living alone or survive on less than €6.62 per day per person for a household of two adults and two children under 14 years of age. A significant proportion of foreign nationals residing in Greece (48.0 per cent), the unemployed (45.9 per cent), persons living in households with three or more children (32.4 per cent) and single-parent households with dependent children (27.8 per cent) are at particular risk. Gender-disaggregated data show that women in all of these categories are at significantly higher risk of poverty.

63. Over one million people in Greece can be considered as extremely poor, meaning that they have less than 40 per cent of the median average income at their disposal. Put bluntly, they have to survive on less than €8.42 per day for a single-person household or on less than €4.42 per day per person for a family of two adults and two children.

64. It should be further noted that European Union-wide surveys on income and living conditions are based on household interviews and therefore tend to undersample social groups at particular risk of poverty or social exclusion, such as homeless people and Roma, and exclude persons living in camps or institutions, including refugees and asylum seekers. They tend to underestimate the current humanitarian and human rights crisis in Greece. Disaggregated data on the social situation of particular groups at risk of vulnerability, such as the homeless, Roma, irregular migrants or persons with disabilities, are missing or not

[27] Hellenic Statistical Authority, Risk of Poverty: 2014 Survey on Income and Living Conditions, 8 July 2015.

collected regularly, despite repeated requests by United Nations human rights treaty bodies to provide such data.

65. The number of persons that are considered severely materially deprived, meaning that they cannot afford four or more items on a nine-point scale measuring deprivation, has nearly doubled, from 11.6 per cent in 2010 to 21.5 per cent in 2014. This rate is significantly above the eurozone average of 7.3 per cent and currently far above that of other Southern European countries that underwent adjustment policies, such as Portugal (10.5 per cent) and Spain (7.1 per cent).

66. In the view of the Independent Expert, Greece needs to undertake reforms that will transform the existing system into a modern social welfare system that is just, efficient, sufficiently funded and targeted to those in need and that protects core social, economic and cultural rights in a comprehensive and non-discriminatory manner. It is essential to roll out the guaranteed minimum income scheme, which will provide means-tested support for the poor, as quickly and as reasonably as possible. Greece needs a social welfare system that assists and encourages taking up employment as soon as it becomes available. However, under current economic conditions, coverage of unemployment benefits needs to be expanded to ensure that the unemployed receive benefits for up to 24 months. Furthermore, the extremely limited tax-funded unemployment schemes need to be enlarged, in order to support more unemployed workers in low-income households. In this context, it would also be essential to increase support to affected individuals through the European Social Fund. The aim should be a reliable and responsive social welfare net that ensures that persons who are either unable to find jobs or physically unable to work can enjoy a life in dignity.

67. There has been intense pressure on the Government to make further cuts in pensions. In the view of the Independent Expert, there is a need to reform the pension system on the basis of the principle of intergenerational solidarity to make it financially sustainable and to prevent old age poverty. In this context, the Independent Expert would like to point out that the current official poverty threshold of €12.63 per day or €384 per month for a single person is, in his view, already at the margins of what can be considered as a minimal threshold for ensuring a life in dignity; it should be considered a line that should not be crossed, if there is no evidence that the actual cost of living has fallen significantly.

C. Right to food, housing and health care

68. There is a close link between income poverty and denial of social and economic rights. For example, only a few Greek people (3.1 per cent) above the official poverty threshold claim that they cannot afford a meal with meat, chicken, fish (or equivalent vegetarian food) every second day. But nearly half of those below the official poverty threshold (47.5 per cent) make this claim.

69. The number of people who live in households that cannot keep their home adequately warm doubled from 15.4 per cent in 2010 to 32.9 per cent in 2014. In addition, 43.1 per cent of all poor households report living in overcrowded homes.

70. The Independent Expert welcomes the position taken by the Government during the negotiations with the institutions in November 2015 that better protection was required against foreclosure on the primary residences of homeowners with low incomes. However, the state of the housing market needs to be monitored closely, not only in terms of the affordability of housing, but also in terms of the availability of housing units for low-income households. Greece currently has the highest rate of housing cost overburden in the European Union, a rate that increased steeply from 18.1 per cent in 2010 to 40.7 per cent in 2014. This means that people in Greece spent more of their disposable income to cover housing costs, including electricity, heating and water, than in any other European country.

It is of particular concern that 95 per cent of all individuals living below the poverty threshold currently spend more than 40 per cent of their total disposable income on housing, leaving limited funds for the purchase of other essential goods and services. Greek society cannot afford to be pushed into a situation where the right to adequate and affordable housing becomes a luxury for the few.

71. There is a high risk of foreclosures and further increases in homelessness as the number of households that are in arrears in paying mortgages, rent or utility bills increased during the crisis from 30.9 per cent in 2010 to 46.4 per cent in 2014. In particular, 73.6 per cent of poor households are in arrears, underlining the need for targeted debt relief for those households, which will not be able to service their mortgages or loans or are unable to cover unpaid social contributions and their tax obligations. Of particular concern to the Independent Expert are also impoverished individuals who cannot access social welfare or security benefits because they are in arrears with tax authorities or public social security funds.

72. The Independent Expert is also concerned about the lack of official information on the number of persons who are homeless. He recommends increasing the supply of social housing units and providing appropriate forms of financial support, such as rental subsidies for low-income households, homeless persons and Roma.

73. Unprecedented cuts to the public health system have resulted in critical understaffing in parts of the public health system, an increase in co-payments and waiting lists, and difficulties in providing effective and affordable access to the right to adequate health care for all. An estimated 2.5 million people have no health insurance, as public health insurance is largely linked to employment status.[28] The number of persons reporting that they have postponed a medical examination because health care was too expensive increased by 85 per cent between 2010 and 2013. In 2013, 13.9 per cent of people in the lowest income quintile reported that that they had postponed a necessary medical examination because it was too expensive (up from 7.8 per cent in 2010).[29] Suicide rates and mental disorders have significantly increased in Greece as a consequence of the financial crises, while mental health care has been affected by severe cuts.

74. Refugees, asylum seekers and undocumented migrants continue to encounter difficulties in gaining access to health-care facilities, goods, services and information. The ability of the Greek health system to provide adequate health care to refugees upon entry is severely stretched. Civil society initiatives are trying to fill the gaps in public services by looking after a growing number of people within Greece who cannot afford medical services or medication. In this context, the Independent Expert welcomes the decision to allocate additional funds for public health care in the 2016 budget, but doubts that the limited increase of funds is sufficient to restore respect for the right to health in Greece. He welcomes the new law (4368/2016) enacted on 20 February 2016 which aims at providing universal health coverage, free access to the public health system and easier access to medical care, treatment and hospitalization. The law will improve access to health care for uninsured individuals and their family members, pregnant women, the chronically ill, disabled, minors and other vulnerable groups.

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[28] C. Economou, *Barriers and Facilitating Factors in Access to Health Care Services in Greece* (Copenhagen, World Health Organization Regional Office for Europe, 2015).

[29] Eurostat, Self-reported unmet needs for medical care. The European Union average for the lowest income quintile is 4.9 per cent.

V. Conclusions and recommendations

A. Conclusions

75. **The Independent Expert acknowledges the efforts undertaken by the Government of Greece and international lenders in attempting to redress the country's economic standing and bring it out of insolvency. However, he notes with concern that the obligations of the Government and international lenders towards rights holders in the country continue to be sidelined, in both the design and the implementation of the structural reform programmes. He regrets that to date, no comprehensive ex ante human rights impact assessments of the three economic reform programmes have been carried out.**

76. **Social and economic rights have been denied in a widespread manner. More than one million persons in Greece have fallen below income levels indicating extreme poverty.[30] In the view of the Independent Expert, these individuals are ultimately denied, in one or another form, the enjoyment of core essential minimum levels of social, economic and cultural rights, which States have to protect in all circumstances. Extreme poverty in Greece is pervasive, taking into consideration the fact that currently, 1 of 10 persons (or 10.4 per cent of the population) is living under such conditions.**

77. **The austerity measures implemented since 2010 have contributed significantly to this outcome. The adverse human rights impacts are not the product of an "invisible hand"; States and international, public and private financial institutions within and outside Greece bear responsibility. First, it should be noted that irresponsible borrowing and lending contributed significantly to the financial crisis in Greece. Second, excessive austerity measures not only significantly deepened the economic crisis, but also prescribed cutting social protection and public health expenditures, undermining the rights to social security and health. Finally, insufficient priority was given to addressing well-known gaps in the social security system of Greece. Instead of addressing these gaps first, drastic economic reforms with dubious prospects in terms of growth were implemented at the expense of human rights.**

78. **The current financial assistance programme acknowledges the immense sacrifices the Greek society has made, but ignores the fact that the Government of Greece is to a large extent currently unable to secure for a large number of individuals within its territory the enjoyment of essential economic and social rights. This intolerable situation is not caused primarily by a lack of political will on the part of the current Government to curb violations of economic and social rights in Greece, but is compounded by the limited fiscal space at its disposal to bring the situation into conformity with its international human rights obligations. In particular, the wisdom of imposing further cuts in social welfare of 0.5 per cent of GDP as part of the conditionality of the current adjustment programme is highly questionable; the proposed cuts should be reconsidered in a context where extreme poverty is rampant and where insufficiently sized and inadequately targeted social welfare benefits contribute only marginally to a reduction in poverty, leaving many long-term unemployed and, in particular, foreign nationals from countries outside the European Union in a state of destitution.**

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[30] Extreme poverty in Greece is defined as having less than 40 per cent of the median equalized disposable income. This means that an adult living alone, after all social transfers, has less than €8.42 per day at her or his disposal for housing, food, clothing, hygiene, transport, health care, etc.

79. **Unemployment and poverty should not be addressed only through social policy measures. Very small and medium-sized businesses make up the majority of the Greek economy. Their lack of access to credit and the huge stock of non-performing loans have resulted in a situation where investment, creation of employment and economic growth are inhibited. Yet, in Greece, the chances of overcoming the recession through a revival of private investment seem to be minimal. The widespread hope that private investment can be the primary engine of growth and development may prove to be illusory, given that capacity utilization is at historically low levels; the income expectations of the majority of citizens are extremely depressed and there still is uncertainty about whether the recession will be overcome. The only way to give positive impulse to an economy stuck in deflation and depression is by enabling the Government to launch a robust investment initiative. To finance this initiative, public debt should be restructured in a way that would create the policy space for the Government to launch projects to improve the situation of the poor and the unemployed.**

80. **Greece has a challenging structural reform agenda: improving the social security system; ensuring access to health care for all; professionalizing the public administration; introducing a more progressive tax system, in particular by reducing tax evasion and unjustifiable tax exemptions for certain privileged groups; boosting the economy; reducing inequality; and repaying a considerable amount of debt. It is hard to believe that such far-reaching reforms can be implemented effectively if the Greek people's views are not seriously taken into consideration when defining the objectives, scope, sequencing and pacing of these reforms and if they appear to be imposed by lenders with the sole goal of repayment. National ownership of these reforms can only be ensured through public consultation and social dialogue and if they are implemented with full respect for democratic participation and human rights.**

B. Recommendations to the Government of Greece and its international lenders

81. **The Independent Expert wishes to draw attention to the recommendations made by the previous mandate holder (A/HRC/25/50/Add.1, paras. 93-93), which have largely not been implemented, and recent recommendations of the Committee on Social, Economic and Cultural Rights (E/C.12/GRC/CO/2). In addition, he recommends that the Government of Greece and its international lenders:**

(a) **Carry out a comprehensive human rights impact assessment of the structural adjustment programme in cooperation with all relevant stakeholders, including the institutions, the Greek National Commission for Human Rights, the Ombudsman and civil society. The assessment should include, at a minimum, an evaluation of past failures to protect economic, social and cultural rights of the Greek population and ex ante forecasts of the social and human rights impacts of particular adjustment measures;**

(b) **Review economic reform policies and adjustment measures agreed between Greece and the institutions to ensure that they do not undermine the progressive realization of economic, social and cultural rights, giving priority to safeguarding the enjoyment of minimum essential levels of economic and social rights by all individuals in situations of vulnerability in Greece;**

(c) **Postpone the reductions in social welfare expenditure envisioned in the latest memorandum of understanding until post-crisis economic recovery when a**

reduction in unemployment, poverty and severe material deprivation would likely enable implementation of such cost-saving measures without undermining the enjoyment of core social, economic and cultural rights;

(d) Enlarge extremely limited tax-funded schemes to support more unemployed workers in low-income households, including by increasing support to affected individuals through the European Social Fund.

C. Recommendations to the Government of Greece

82. **The Independent Experts recommends that the Government of Greece:**

(a) Implement the structural adjustment programme outlined in the memorandum of understanding with due respect for human rights, taking fully into account judgments and decisions by national and international courts and human rights bodies and recommendations of the Greek National Commission for Human Rights as well of European and international human rights bodies;

(b) Ensure national ownership of reform measures through public consultation and social dialogue and by implementing structural reforms with full respect for the right to participation;

(c) Undertake reform of the existing system of social security to transform it into a modern social welfare system that is just, efficient, sufficiently funded and targeted to those in need and protects core social, economic and cultural rights in a comprehensive and non-discriminatory manner, as set out in the ILO Social Protection Floors Recommendation, 2012 (No. 202);

(d) Reform the pension system on the basis of the principle of intergenerational solidarity with a view to making it financially sustainable and to ensure the protection of older persons from poverty. In this regard, the Government should consider introducing a tax-funded basic pension scheme for all older persons whose pensions do not allow them to live at a minimum income level;

(e) Urgently close gaps in the social welfare net by redirecting benefits to individuals belonging to the most disadvantaged and marginalized groups who are currently inadequately covered. If necessary, temporarily increase social welfare expenditure to ensure a sufficient level and reach of benefits so as to guarantee income security for all individuals, including access to essential goods and services meeting the criteria of availability, accessibility, acceptability and quality. In this context, the Government should roll out as quickly as possible a nationwide, means-tested guaranteed minimum income scheme;

(f) Expand the coverage of unemployment benefits by ensuring that the unemployed receive benefits for up to 24 months;

(g) Introduce a means-tested housing benefit for all low-income households struggling to meet housing costs;

(h) Protect low-income households unable to service their mortgages from foreclosures and expand programmes that combat homelessness;

(i) Make a basic package of health-care services, including out-patient services, hospitalization and medicines, available to all, irrespective of social insurance affiliation, at zero or near-zero cost, as envisaged by most recent legislation (Law 4368/2016);

(j) **Ensure that overindebted persons, including impoverished persons with debts to tax authorities or social security funds, are not excluded from receiving essential social security benefits;**

(k) **Strengthen the access to justice of persons in situations of vulnerability, including by making legal aid more broadly accessible for persons who do not have sufficient means;**

(l) **Ensure that the Greek Ombudsman continues to receive sufficient funds and increase the resources and staffing of the Greek National Commission on Human Rights;**

(m) **Continue the inquiry into the origins of the debt crisis, drawing on the work initiated by the former Truth Committee on Public Debt with the aim of establishing better judicial and administrative accountability of government officials and decision makers in the private sector;**

(n) **Consider endorsing the Basic Principles on Sovereign Debt Restructuring Processes and the Principles on Promoting Responsible Sovereign Lending and Borrowing developed by the United Nations Conference on Trade and Development;**

(o) **Consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

D. Recommendations to international lenders

83. **The Independent Expert recommends that the international lenders:**

(a) **Provide debt relief to Greece with a view to boosting social-inclusive growth through an investment package and by assisting Greece to close gaps in its social security net;**

(b) **Develop guidelines for comprehensive human rights and social impact assessments of adjustment programmes funded or co-funded by the European Commission, the European Stability Mechanism, the European Central Bank or the International Monetary Fund and include estimates of the resources required for social protection and investment in debt sustainability assessments;**

(c) **Ensure policy coherence among the financial, social and human rights policies of the European Union developed in response to the financial crisis; include the reduction of unemployment and poverty and the affordability and accessibility of public health-care services as measurable targets in the ongoing adjustment programme and monitor progress regularly;**

(d) **Further increase support to Greece under European Union programmes, including in particular funds for combating poverty and social exclusion and for social and labour market measures within Greece;**

(e) **Relax budgetary restrictions for Greece to enable the country to strengthen its response to the refugee crisis in a manner that reflects best practices and standards in the field of human rights and refugee law;**

(f) **Support Greece by providing human, technical and financial resources to ensure appropriate health care, food and housing for refugees.**